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RECORD

Supreme Court of the United States

October Term, 1968

No. 150

FRANCES MATTIELLO,

Appellant,

v.

STATE OF CONNECTICUT,

Appellee.

APPEAL FROM THE APPELLATE DIVISION OF
THE CIRCUIT COURT OF CONNECTICUT

APPEAL FILED JUNE 2, 1967
PROBABLE JURISDICTION NOTED JUNE 3, 1968

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Chronological List of Important Dates

CIRCUIT COURT

FIRST CIRCUIT

NORWALK, CONNECTICUT

CR1-20111 AP

STATE OF CONNECTICUT

vs.

FRANCES MATTIELLO

March 17, 1966	Information
March 29, 1966	Motion for Bill of Particulars
April 6, 1966	Bill of Particulars
April 15, 1966	Substitute Information
April 15, 1966	Demurrer
May 11, 1966	Memorandum on Demurrer
June 10, 1966	Judgment File
June 21, 1966	Defendant's Appeal
November 10, 1966	Appellate Division Judgment File
November 10, 1966	Appellate Division Opinion
November 30, 1966	Petition for Certification to Supreme Court of Connecticut
December 22, 1966	Order Denying Certification
March 20, 1967	Notice of Appeal to Supreme Court of the United States
June 2, 1967	Jurisdictional Statement Filed
March 27, 1968	Additional Response Filed
June 3, 1968	Probable Jurisdiction Noted, and Motion for Permission to Proceed *In Forma Pauperis* Granted

Information

(Mounted Opposite)

6-3-66 → 3/25
$2500.00

FORMATION ☐ SUBSTITUTED
T-106 REV. 11-64

STATE OF CONNECTICUT
CIRCUIT COURT

Disposition date 6-10-66

No. CR/-20111

TITLE	STATE OF CONNECTICUT vs.	CIRCUIT NO	TO BE HELD AT (Town)	ON (Date)
	Frances Mattiello	1-N	Norwalk	

ALLEGATION

The undersigned, Assistant Prosecuting Attorney of the Circuit Court of the State of Connecticut, in said Circuit, on his oath of office complains, deposes, and alleges that he has reason to believe and does believe that

NAME OF ACCUSED: Frances Mattiello — OF (City or Town): Norwalk

FIRST COUNT	DID COMMIT THE CRIME OF: Manifest danger of falling into vice AT (Town): Norwalk in said state	ON OR ABOUT (Date): 3/7/66.	IN VIOLATION OF GENERAL STATUTE NO: 17-379
SECOND COUNT	DID COMMIT THE CRIME OF AT (Town) in said state	ON OR ABOUT (Date)	IN VIOLATION OF GENERAL STATUTE NO
THIRD COUNT	DID COMMIT THE CRIME OF AT (Town) in said state	ON OR ABOUT (Date)	IN VIOLATION OF GENERAL STATUTE NO

☐ See reverse side for additional counts

DATE & SIGNATURE — DATE: 3/17/66 — SIGNED (Prosecuting Attorney): [signature]

JURAT (For warrant only) — Subscribed and sworn to before me this 17 day of March 1966 — SIGNED (Title and full name, Sec. CA): [signature]

DEFENDANT ADVISED OF HIS RIGHTS BEFORE PLEA (Sign, date): Levine J. 3-25-66

TYPE OF BOND: ☐ SURETY ☐ CASH (17) YOUNGER 6-3- — ATTORNEY OR PUBLIC DEFENDER APP'TD.

BONDSMAN NO: — BOND (Continued from): $2500. — $ — $ — (Reduced to)

CONTINUED TO (Date): 4-15-66

TRANSFERRED TO JURY SESSION TO BE HELD AT — ON (Date) — FOR JURY OF (No.)

TRIED BY: ☐ COURT JURY: ☐ 6 ☐ 12 — PLACE OF TRIAL (Town): Norwalk

COURT ACTION

COUNT	DATE OF PLEA	PLEA	PLEA WITHDRAWN Date	PLEA WITHDRAWN New Plea	VERDICT OR FINDING	FINE	DAYS IN JAIL	DISPOSITION IN ADDITION TO OR OTHER THAN JAIL OR FINE
FIRST COUNT								
SECOND COUNT								
THIRD COUNT								

SEE SUBSTITUTE INFORMATION

BOND FORFEITURE: ☐ Bond in amount of $ called and forfeited 19 , at A.M./P.M. ☐ WARRANT AND ARREST ORDERED

NAME OF PROSECUTING ATTORNEY ON ORIGINAL DISPOSITION: CARROLL — SIGNED (Clerk — on original disposition): [signature] — SIGNED (Judge — on original disposition): [signature]

COUNT NO.	DATE	OTHER COURT ACTION (Time of jury verdict, change in jury election, opening judgment, etc.)	SIGNED (Judge — other than on original disposition)

MITTIMUS ISSUED (Date) — FINE PAID $ — RECEIPT NO — COURT REPORTER: CECEVICH

ARREST WARRANT

CIRCUIT NO. — N. | DATE 3/17/66 | State of Connecticut

To any sheriff, any city, town or borough policeman or constable, any state policeman, any special constable or police officer, or to any , Greeting: BY AUTHORITY OF THE STATE OF CONNECTICUT, you are hereby commanded to arrest the body of the within named accused and forthwith have said accused before said Circuit Court, to be held at the place aforesaid, to answer the charges alleged in the foregoing information of said assistant prosecuting attorney, and be dealt with thereon as the law directs. Hereof fail not, but of this warrant due service and return make.

BY THE COURT | SIGNED (A Judge of the Circuit Court) John F. Dee 3-17-66

RETURN ON ARREST

CIRCUIT NO. 1 | TOWN OF Norwalk | DATE | State of Connecticut

Then and there, by virtue of the within and foregoing complaint and warrant, I arrested the body of the within named accused and read the same in the hearing of said accused; and have said accused here in court for examination.

ATTEST (Officer's Signature and Department) James P. Lalley Captain

ADDITIONAL COUNTS

ALLEGATION

The undersigned, Assistant Prosecuting Attorney of the Circuit Court of the State of Connecticut, in said Circuit, on his oath of office, further complains, deposes, and alleges that he has reason to believe and does believe that the said accused

FOURTH COUNT	DID COMMIT THE CRIME OF AT (Town) in said state	ON OR ABOUT (Date)	IN VIOLATION OF GENERAL STATUTE NO
FIFTH COUNT	DID COMMIT THE CRIME OF AT (Town) in said state	ON OR ABOUT (Date)	IN VIOLATION OF GENERAL STATUTE NO
SIXTH COUNT	DID COMMIT THE CRIME OF AT (Town) in said state	ON OR ABOUT (Date)	IN VIOLATION OF GENERAL STATUTE NO
SEVENTH COUNT	DID COMMIT THE CRIME OF AT (Town) in said state	ON OR ABOUT (Date)	IN VIOLATION OF GENERAL STATUTE NO
EIGHTH COUNT	DID COMMIT THE CRIME OF AT (Town) in said state	ON OR ABOUT (Date)	IN VIOLATION OF GENERAL STATUTE NO

DATE & SIGNATURE | DATE | SIGNED (Assistant Prosecuting Attorney)

COURT ACTION

COUNT	DATE OF PLEA	PLEA	PLEA WITHDRAWN Date	PLEA WITHDRAWN New Plea	VERDICT OR FINDING	FINE	DAYS IN JAIL	DISPOSITION IN ADDITION TO, OR OTHER THAN, JAIL OR FINE
FOURTH COUNT								
FIFTH COUNT								
SIXTH COUNT								
SEVENTH COUNT								
EIGHTH COUNT								

SIGNED (Judge — on original disposition)

CCT-106 (BACK)

Bill of Particulars

FIRST CIRCUIT COURT

NORWALK, CONNECTICUT

CR1-20111

April 6, 1966

STATE OF CONNECTICUT

vs.

FRANCES MATTIELLO

In response to the defendant's motion for Bill of Particulars, the State alleges as follows:

Between March 7, 1966 and March 8, 1966 the accused did have intercourse with six males in the town of Norwalk.

STATE OF CONNECTICUT
s/ JOHN E. VALLERIE, JR.
John E. Vallerie, Jr.
Assistant Prosecutor

(Affidavit of Service Omitted in Printing)

Substitute Information

(Mounted opposite)

INFORMATION ☒ SUBSTITUTED
CCT-106 REV. 11-64

STATE OF CONNECTICUT
CIRCUIT COURT

No. CR1-20111 Disposition date 6-10-66

TITLE	STATE OF CONNECTICUT vs.	CIRCUIT NO.	TO BE HELD AT (Town)	ON (Date)
	— FRANCES MATTIELLO	1	Norwalk	4-15-66

ALLEGATION The undersigned, Assistant Prosecuting Attorney of the Circuit Court of the State of Connecticut, in said Circuit, on his oath of office complains, deposes, and alleges that he has reason to believe and does believe that

NAME OF ACCUSED	OF (City or Town)
FRANCES MATTIELLO	Norwalk

	DID COMMIT THE CRIME OF	AT (Town)	in said state	ON OR ABOUT (Date)	IN VIOLATION OF GENERAL STATUTE NO
FIRST COUNT	Manifest Danger of Falling Into Vice	Norwalk		3-7-66	17-379
SECOND COUNT	Lascivious Carriage	Norwalk		3-7-66	53-219
THIRD COUNT	Disorderly Conduct	Norwalk		3-7-66	53-175

☐ **See reverse side for additional counts**

DATE & SIGNATURE DATE 4/12/66 SIGNED (Assistant Prosecuting Attorney)

JURAT (For warrant only) Subscribed and sworn to before me this day of 19 SIGNED (Judge or clerk or Com. Sup. Ct.)

DEFENDANT ADVISED OF HIS RIGHTS BEFORE PLEA (Sign, date) 3-25-66 Lenne J.

CONTINUED TO (Date) 5-26, 6-10-

TYPE OF BOND ☐ SURETY ☐ CASH BONDSMAN NO. BOND (Continued) (Bind over) (Appeal) (Reduced to) $2500 $ $ $

ATTORNEY OR GUARDIAN ENTERED APPEARANCE PUBLIC DEFENDER Worthington 6-3 Phyllis Mattiello

TRANSFERRED TO JURY SESSION TO BE HELD AT ON (Date) FOR JURY OF (No.)

TRIED BY ☐ COURT JURY: ☐ 6 ☐ 12 PLACE OF TRIAL (Town) NORWALK

COURT ACTION

COUNT	DATE OF PLEA	PLEA	PLEA WITHDRAWN Date	PLEA WITHDRAWN New Plea	VERDICT OR FINDING	FINE	DAYS IN JAIL	DISPOSITION IN ADDITION TO, OR OTHER THAN, JAIL OR FINE
FIRST COUNT	5-13	NG			G			Conn. State Farm for Women
SECOND COUNT	6-3	NG			G			
THIRD COUNT	6-3	NG			NG.			

BOND FORFEITURE ☐ Bond in amount of $ called and forfeited 19 , at A.M./P.M. ☐ WARRANT AND ARREST ORDERED

NAME OF PROSECUTING ATTORNEY ON ORIGINAL DISPOSITION SIGNED (Clerk — on original disposition)
CARROLL

SIGNED (Judge — on original disposition)

COUNT NO.	DATE	OTHER COURT ACTION (Time of jury verdict, change in jury selection, opening judgment, etc.)	SIGNED (Judge — other than on original disposition)
	5-13	Demurrer Overruled. Stapleton	
	6-3	V.D. Ordered.	

MITTIMUS ISSUED (Date) 6-10-66 FINE PAID $ RECEIPT NO. COURT REPORTER GECEVICH

2

Demurrer

CIRCUIT COURT

FIRST CIRCUIT AT NORWALK

COUNTY OF FAIRFIELD

April 14, 1966

STATE OF CONNECTICUT

vs.

FRANCES MATTIELLO

The Defendant demurs to the complaint for the following reasons:

1. It purports to charge a crime pursuant to General Statutes §17-379, which statute is unconstitutional on its face, in that it violates the Fourteenth Amendment to the Constitution of the United States by discriminating against certain persons without basis for its support and thereby denying to these persons equal protection under the law.

2. It purports to charge a crime pursuant to General Statutes §17-379, which statute is unconstitutional on its face, in that it violates the Fourteenth Amendment to the Constitution of the United States in that it is too vague and uncertain in its meaning to give adequate warning of the conduct proscribed or to furnish limits sufficiently distinct to guide judges and juries in a fair administration of the law and thereby deprives defendant due process of law.

The Defendant

ROBERT N. GROSBY

By: Robert N. Grosby
Public Defender

Memorandum on Demurrer

CIRCUIT COURT

FIRST CIRCUIT AT NORWALK

No. CR1-18454

No. CR1-20111

May 11, 1966

STATE OF CONNECTICUT

vs.

FRANCES MATTIELLO

Defendant demurs to information on two grounds:

1. Section 17-379 of the General Statutes is unconstitutional, and violative of the 14th Amendment because it discriminates against certain females (viz., unmarried females between the ages of sixteen and twenty-one) without basis for its support and denying 'equal protection'.

2. And because its terms are vague and uncertain in its meaning . . . thereby depriving defendant of due process.

The Legislature has determined, in the exercise of its police power that any unmarried female between the ages of sixteen and twenty-one who is in manifest danger . . . and who is leading a vicious life, or who has committed any crime, upon conviction . . . may be committed to any institution except Long Lane Farm, is not discriminatory but carefully selective of a group that the Legislature in

its sound discretion finds necessary and beneficial to society.

The Legislature has also determined that any person, under sixteen is incapable of committing a crime. See Juvenile Court Act.

The Legislature in Section 17-379 has comparable legislation for males between the ages of sixteen and twenty-one.

Persons twenty-one and over are, upon conviction, committed elsewhere.

Different age groups as outlined above are treated according to its age, but not indiscriminately.

There is nothing vague about the above enumerated categories in Section 17-379, each is clear and succinct and capable of being legally defined.

Statutes will not be held unconstitutional unless clearly so.

Where the constitutionality of a statute is questioned, every presumption and intendment shall be made in its favor. *State* v. *Miller,* 126 Conn. 377 and *State* v. *Muolo,* 119 Conn. 323.

A statute of such consequence to be declared unconstitutional should be done by a court of higher jurisdiction.

The demurrer is overruled.

STAPLETON, J.

Judgment File

Judgment File—Criminal

Circuit Court

STATE OF CONNECTICUT

CIRCUIT COURT

FIRST CIRCUIT HELD AT NORWALK

On June 10, 1966

No. CR1-20111 AP

STATE OF CONNECTICUT

VS

FRANCES MATTIELLO
of East Norwalk, Connecticut

Present, Honorable Joseph A. Adorno, Judge.

Upon the complaint of George F. Carroll, Jr. Assistant Prosecuting Attorney for the Circuit Court, First Circuit, charging the accused with the crimes of manifest danger of falling into vice, in violation of section 17-379, lascivious carriage, in violation of section 53-219 and disorderly conduct in violation of section 53-175 of The General Statutes of The State of Connecticut, at Norwalk, Connecticut on or about March 7, 1966.

The said accused was presented before said Court on May 13 & June 6, 1966, when, it appearing to the Court

that the accused was a minor of the age of 18 years, Phyllis Mattiello of Norwalk was appointed guardian ad litem by the Court. The accused, being then and there called upon to answer to said complaint for pleas, said "Not Guilty".

The Court advised the accused of the accused's right to a trial by jury. The accused then elected to be tried by the Court.

After a full hearing, the Court found the accused Guilty of Manifest Danger of Falling into Vice, Section 17-379 and Lacivious Carriage of Section 53-219 and Not Guilty on Disorderly Conduct, Section 53-175.

It is therefore adjudged by the Court that the accused is Guilty in manner and form as charged in said complaint, as to Manifest Danger of Falling into Vice, Section 17-379 and Lascivious Carriage, Section 53-219 Committed the Accused to The Connecticut State Farm for Women.

By The Court,

WILLIAM J. MURPHY
William J. Murphy
Clerk

Appellate Division Judgment File

CR1-20111 AP

At a session of the Appellate Division of the Circuit Court held at Meriden in the State of Connecticut on November 10, 1966.

On Appeal From Circuit Court First Circuit

STATE OF CONN.

VS

FRANCES MATTIELLO

This appeal by the Defendant—Frances Mattiello from the judgment of said Circuit Court First Circuit was taken on the 21st day of June 1966.

On the 27th day of June 1966, the appellant filed his assignments of error claiming errors of law in the record, judgment, proceedings and decision of said Court as may appear in the record on file in said Court, and said appeal came to this session of the Appellate Division on November 10, 1966, when the parties appeared.

This Court, having heard the parties, finds that in the record, judgment, proceedings and decisions of said court there is no error.

Judgment entered November 10, 1966

By the Court,

WILLIAM J. MURPHY
Clerk

Appellate Division Opinion

STATE OF CONNECTICUT

v.

FRANCES MATTIELLO

File No. CR 1-20111 AP

Appellate Division of the Circuit Court

Argued July 18, 1966 Decided November 10, 1966

Information charging the defendant, in three separate counts, with manifest danger of falling into vice, lascivious carriage and disorderly conduct, brought to the Circuit Court in the first circuit where a demurrer to the first count was overruled, *Stapleton, J.;* and the issues were tried to the court, *Adorno, J.;* judgment of guilty on the first two counts and not guilty on the third count; and appeal by the defendant from the overruling of the demurrer. *No error.*

Robert N. Grosby, public defender, for the appellant (defendant).

George F. Carroll, Jr., prosecuting attorney, for the appellee (state).

KOSICKI, J. No finding or transcript of evidence has been filed by the defendant; nor is the appeal directed toward the finding of guilty on the second count on which the defendant was committed to the Connecticut State Farm for Women concurrently with the commitment on

the first count. The slim record before us yields little information on the factual background which of necessity we must consider in deciding the questions of law raised by the demurrer. After a full trial on the facts, we cannot pass on the court's ruling on the demurrer as a disembodied proposition of law.

With such meager facts as we can glean from the record, the following subject-matter appears to be admitted or undisputed. The defendant was arrested in Norwalk on March 17, 1966, on the charge of being in manifest danger of falling into vice, contrary to §17-379 of the General Statutes. This statute is quoted in the footnote.[1] At that time she was within one month of reaching her eighteenth birthday. On March 25, she was presented in court on the count referred to and advised of her rights. A guardian ad litem and a public defender were appointed by the court. On April 15, a substitute information was filed in which the defendant was charged with two additional counts, the second being an allegation of lascivious carriage, in violation of §53-219, and the third, disorderly conduct, in violation of §53-175. On the same day, the public defender filed a demurrer to the allegation appearing as the first count, claiming that (1) §17-379

[1] Sec. 17-379. "Commitment of girls over sixteen. Any unmarried female between the ages of sixteen and twenty-one years who is in manifest danger of falling into habits of vice, or who is leading a vicious life, or who has committed any crime, may, upon the complaint of the prosecuting attorney of the circuit court, be brought before said court for the circuit within whose jurisdiction she resides or is found, and, upon conviction thereof, may be committed, until she has arrived at the age of twenty-one years, to the custody of any institution, except Long Lane School, chartered by the general assembly or incorporated under the general laws for the purpose of receiving and caring for females who have fallen into or are in danger of falling into vicious habits."

was unconstitutional on its face in that it violates the fourteenth amendment to the constitution of the United States by discriminating against certain persons without basis for its support and thereby denying these persons equal protection under the law; and (2) it violates the fourteenth amendment because it purports to define a crime in language that is to vague and uncertain in its meaning to give adequate warning of the conduct proscribed or to guide courts in a fair administration of the law, thereby depriving the defendant of due process.

On May 13, the demurrer was overruled after hearing and a memorandum thereon filed. Thereupon, the defendant pleaded not guilty to the first count. For some reason, not apparent on the record, the plea of not guilty to the remaining two counts was entered on June 3 and the case continued for trial to June 10. After trial, on the same day, judgment of guilty was entered on the first two counts and not guilty on the third count. The court then committed the defendant concurrently on the first two counts to the Connecticut State Farm for Women and a mittimus was issued accordingly.

Only one error is assigned on this appeal and that is the court's overruling of the demurer. "The constitutionality of a statute upon which a criminal prosecution is based can be raised by demurrer. . . . The accused may plead over after a demurrer has been overruled. . . . [She] does not thereby waive the right to have the ruling upon demurrer reviewed on appeal. . . . *State* v. *Sul,* 146 Conn. 78, 80. "Upon the overruling of [her] demurrer, the defendant could have refused to plead over, let judgment enter, appealed from the judgment and raised the questions of law [she] now presents. Instead, [she] has appealed from the judgment entered after trial, but [she]

assigns no error in the trial. Where there has been a trial on the merits, this court should have the opportunity of reviewing the questions of constitutionality upon the facts established at the trial." Id., 83. It was also strongly suggested in the cited case that if it had not involved a criminal prosecution under a statute defining a serious crime and imposing a substantial penalty, the defendant would have been precluded from pursuing on his appeal any error claimed in the overruling of his demurrer. Ibid.

The rules stated in the *Sul* case, with meticulous precision and particularity, were ignored by the appellant in the case before us; but we do not rest our decision on that ground alone. The exact question presented on the merits has been overlooked by the defendant except for one sentence in the closing paragraphs of her brief: "There is no crime of being vicious or of falling into vice." Both parties appear to agree on this crucial point and the applicable law thereon appears to be well settled in Connecticut.

Turning our attention to the merits of the appeal, "[W]e cannot impute to the legislature an intent to pass an unconstitutional statute and a law should be construed, if it can reasonably be done, so as to make it valid." *State* v. *Muolo,* 119 Conn. 323, 330. A statute will not be held void for uncertainty if a practicable or sensible effect may be given to it. *State* v. *Zazzaro,* 128 Conn. 160, 165. The rule of strict construction does not allow the avoidance of the clear import of the law through some mere technicality in disregard of its context and in frustration of the obvious legislative intent. *State* v. *Faro,* 118 Conn. 267, 274.

Appellate Division Opinion

It should be noted at the outset that Title 17 of the General Statutes is devoted to a wide variety of sociological problems and legislative policy and methods for their correction and solution. It is entitled "Humane and Reformatory Agencies and Institutions." The aims and purposes of this legislation are unequivocal, clear, and unquestionably within the powers of legislature to achieve by law. They are, generally, to preserve and increase the benefits to an orderly society, deriving from the care, protection and welfare of those individuals who, because of lack of physical, mental or moral resources or discipline are especially in need of the salutary aid and earnest concern on the part of the general public. Section 17-379 is incorporated in chapter 309 (Reformatory Institutions) which is a component part of Title 17 (Part III, Miscellaneous Agencies). As we shall develop later, it is not a penal statute. Parts I (The Connecticut State Farm for Women), II (Long Lane School), IV (Connecticut Reformatory), and V (Connecticut School for Boys), and VI (General Provisions), constitute the remainder of chapter 309. The next succeeding and separate portion of the General Statutes, Title 18, is denominated "Penal Institutions" and deals with state prisons and jails.

In *Reynolds* v. *Howe,* 51 Conn. 472, the complainant, father of a minor son eleven years of age, made application for a writ of habeas corpus alleging unlawful confinement of his son in the State Reform School at Meriden. The son had been confined on a mittimus issued by a justice of the peace on complaint of a grand juror that the said Reynolds was in danger of being brought up, and was in fact being brought up, to lead an idle and vicious life. The proceedings were brought under the following

statute: " 'Justices of the peace shall have power to commit to the State Reform School ** any boy under the age of sixteen years, who is in danger of being brought up, or is brought up, to lead an idle or vicious life.' Acts of 1881, ch. 119." Id. p. 476. The trial court rendered judgment for the defendant.

Objection had been made to the constitutionality of the act on various grounds, inter alia, that the right of appeal to a jury trial were not allowed, that the proceeding was a criminal prosecution, that no provision was made for a hearing, and that there was no adequate definition of the word "vicious." In affirming the judgment, our Supreme Court of Errors said: "It is manifest that this statute, so far as we have quoted it, creates no crime and does not treat the condition of the boy as anything for which he is in fault. It found its origin in the social necessity of saving boys from impending ruin and the community from the prevalence of crime. It is of the same nature with statutes which authorize the compulsory education of children, . . . the appointment of . . . conservators to take charge of property of those who are incapable of managing their own affairs, the confinement of the insane, and the like. The welfare of society requires and justifies such enactments. . . . *Reynolds* v. *Howe,* supra 476, 477. "But, as we have shown the boy is not proceeded against as a criminal. Nor is confinement in a State Reform School a punishment, nor in any proper sense imprisonment. It is in the nature of parental restraint. . . . Statutes like this have been in existence for the past two hundred years, and it is very late to call their constitutionality in question." *Reynolds* v. *Howe,* Id., 478.

The same reasoning is reiterated and a like result reached in *Cinque* v. *Boyd,* 99 Conn. 70. The case arose out of a habeas corpus proceeding to procure the release of a minor fourteen year old, who had been committed to the Connecticut School for Boys in Meriden by the Juvenile Court of the city of New Haven. In a reservation to the Supreme Court of Errors, the final question propounded by the reservation was answered by advising that the writ of habeas corpus be dismissed. The court said (p. 80): "The law is attacked in this case largely upon constitutional grounds, and in some other respects as being invalid by obscurity and insensibility to an extent rendering its full enforcement impossible. The constitutional objections turn on whether the Act is one for punishment of crime, and therefore subject in its form and in the manner of its administration to the various particulars contained in the Bill of Rights, or whether it is concerned with the care and protection which every State as *parens patriae* in some measure affords to all inhabitants who from personal deficiencies or incapacities or conditions of life are in some degree abnormal, and hence in its scope, intent and method of administration is entirely of civil nature." And at page 85, the court, after citing cases in many jurisdictions, upholding the principle that inquiries conducted by juvenile courts are not criminal trials, quotes with approval from *Commonwealth* v. *Fischer,* 213 Pa. St. 48, 52, 62 Atl. 198: "To save a child from becoming a criminal, or from continuing in a career of crime, to end in maturer years in public punishment and disgrace, the legislature surely may provide for the salvation of such a child, if its parents or guardian be unable or unwilling to do so, by bringing it into one of the courts of the State without any process at all, for

the purpose of subjecting it to the State's guardianship and protection." See such cases as *Wissenberg* v. *Bradley,* 209 Iowa 813, 816, 229 N. W. 205, 207; *Weber* v. *Doust,* 84 Wash. 330, 332, 146 p. 623, 624; *Weber* v. *Doust,* 81 Wash. 668, 672, 143 Pac. 148, 150; *Marlowe* v. *Commonwealth,* 142 Ky. 106, 117, 133 S. W. 1137, 1141; *Ex Parte Januszewski,* (Cir. Ct., S. D. Ohio, E. D.), 196 F. 123, 126; *Re Perham,* 104 N. H. 276, 184 A. 2d 449.

Although many of these cases deal with juveniles, according to the age limits defined by state law, the conclusion is inescapable that §17-379, read within the context of the statutes in Title 17, is not one that imposes a penalty for a crime, but rather acts as a protective safeguard for the purpose of providing custody, care and training for females, between the ages of sixteen and twenty-one, who may be in manifest danger of falling into habits of vice, or who may be leading a vicious life, or who may have committed any crime. What we have already said makes unnecessary to discuss further the claim of vagueness or uncertainty, made by the defendant, in the use in the statute of the words "vice" and "vicious."

There is no error.

In this opinion Pruyn and Dearington, Js., concurred.

The foregoing is a true copy of the original opinion as filed with the Chief Clerk of the Circuit Court, but the opinion is subject to alteration and addition by the Judges until printed in the Connecticut Circuit Court Reports.

ELLIOTT R. KATZ
Chief Clerk

Supreme Court Order Denying Certification

SUPREME COURT OF ERRORS

CR1-20111AP

STATE OF CONNECTICUT

vs

FRANCES MATTIELLO

December 21, 1966

The Defendant having filed a petition for certification and the court having considered said petition finds that it should be denied.

Whereupon it is ordered that said petition be and it hereby is denied.

By the Court

s/ DOMINIC A. DICORLETO, Clerk

LIBRARY
SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
JUL 17 1968
JOHN F. DAVIS, CLERK

STATEMENT NOT PRINTED

IN THE

Supreme Court of the United States

October Term, 1968

No. 150

FRANCES MATTIELLO,

Appellant,

v.

STATE OF CONNECTICUT,

Appellee.

ON APPEAL FROM THE APPELLATE DIVISION OF THE CIRCUIT COURT OF CONNECTICUT

BRIEF OF APPELLANT

ROBERT N. GROSBY,
Public Defender,
First Circuit Court,
21 Isaac Street,
Norwalk, Connecticut.

JOSEPH D. HARBAUGH,
Chief Public Defender,
Connecticut Circuit Court,
31 High Street,
New Haven, Connecticut.

Attorneys for Appellant.

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ARGUMENT:	
I. Whether or not *C.G.S.*, §17-379 is a penal statute, it must comply with the due process and equal protection standards of the Fourteenth Amendment to the United States Constitution because the statute provides the state a procedure for depriving young females of their liberty	7
II. The terms "habits of vice" and "vicious life" render *C.G.S.*, §17-379 void for vagueness under the Due Process Clause of the Fourteenth Amendment to the United States Constitution because they fail to afford the accused a clear standard of conduct and fail to provide the trier of fact a legally sufficient standard to measure the conduct proven	9
A. *C.G.S.*, §17-379 is void for vagueness because it fails to afford an accused a clear standard of conduct	9

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 150

FRANCES MATTIELLO,

Appellant,

v.

STATE OF CONNECTICUT,

Appellee.

ON APPEAL FROM THE APPELLATE DIVISION OF THE CIRCUIT COURT OF CONNECTICUT

BRIEF OF APPELLANT

Opinions Below

The memorandum opinion of the trial court overruling appellant's demurrer is unreported, but has been made a part of the Record (R. 7). The opinion of the Appellate Division of the Circuit Court of Connecticut (R. 12) is reported at 4 Conn. Cir. Ct. 55, 225 A. 2d 507 (1966). The denial of certification by the Supreme Court of Connecticut (R. 20) is reported at —— Conn. ——, 225 A. 2d 201 (1966).

Jurisdiction

The judgment of the Appellate Division of the Circuit Court of Connecticut was entered on November 10, 1966 (R. 11). Petition for certification to the Supreme Court

of Connecticut was filed on November 17, 1966, and denied by that court on December 21, 1966. Notice of appeal to the Supreme Court of the United States was filed with the First Circuit Court of Connecticut on March 20, 1967. On May 18, 1967, the First Circuit Court of Connecticut granted an extension of time under Rule 13 (1) (subsequently amended, effective October 2, 1967), to docket the appeal and file the Jurisdictional Statement until June 2, 1967. The Jurisdictional Statement was filed on June 2, 1967. On March 27, 1968, pursuant to the direction of this Court, the appellant filed an additional response. Probable jurisdiction was noted, and appellant's motion for leave to proceed *in forma pauperis* granted on June 3, 1968. —— U. S. ——, 88 S. Ct. 2037 (1968). The jurisdiction of this Court rests upon 28 U. S. C. 1257 (2).

Constitutional Provision and Statutes Involved

1. U. S. Constitution, Amendment XIV, §1:

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

2. Section 17-379, *Connecticut General Statutes*:

> "Any unmarried female between the ages of sixteen and twenty-one years who is in manifest danger of falling into habits of vice, or who is leading a vicious life, or who has committed any crime,

may, upon complaint of the prosecuting attorney of the circuit court, be brought before said court for the circuit within whose jurisdiction she resides or is found, and, upon conviction thereof, may be committed, until she has arrived at the age of twenty-one years, to the custody of any institution, except Long Lane School, chartered by the general assembly or incorporated under the general laws for the purpose of receiving and caring for females who have fallen into or are in danger of falling into vicious habits."

3. Section 17-360, *Connecticut General Statutes* (as amended by Public Act No. 152, §20, 1967):

"Women over sixteen years of age belonging to any of the following classes who have been committed by any court of criminal jurisdiction to the commissioner of correction shall be confined in The Connecticut State Farm for Women: First, persons convicted of, or who plead guilty to, the commission of felonies; second, persons convicted of, or who plead guilty to, the commission of misdemeanors, including prostitution, intoxication, drug-using and disorderly conduct; third, unmarried girls between the ages of sixteen and twenty-one years who are in manifest danger of falling into habits of vice or who are leading vicious lives, and who are convicted thereof in accordance with the provisions of section 17-379; fourth, women sentenced to jails. Only such offenders may be committeed to said institutions as in the opinion of the trial court will be benefited physically, mentally or morally by such commitment, and immediately upon commitment, a careful physical and mental examination, by a competent physician, shall be made of each person committed. . . ."

4. Section 17-391, *Connecticut General Statutes* (as amended by Public Act No. 266, §1, 1967):

> "The circuit court may sentence any male person between the ages of sixteen and twenty-one years to the reformatory in any case where the maximum term of imprisonment for the offense committed does not exceed imprisonment in the State Prison for five years. Any person so sentenced shall be sentenced for an indefinite term and may be detained in the reformatory not more than two years."

Questions Presented

1. Do the standards of the Fourteenth Amendment to the United States Constitution apply to *C.G.S.*, §17-379 which, although characterized by the State court as a "protective" statute, permits the State to deprive a young woman of her liberty?

2. Does *C.G.S.*, §17-379 violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution because its terms are so vague and uncertain that it fails to provide both the accused and the trier of fact a fixed standard by which to recognize and measure the proscribed conduct?

3. Does *C.G.S.*, §17-379 violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution because it invades fundamental rights of an arbitrarily-defined class of individuals, to wit, unmarried females between the ages of sixteen and twenty-one years?

Statement of the Case

On March 17, 1966, the appellant was arrested in Norwalk, Connecticut, and charged with being in "manifest danger of falling into habits of vice," in violation of *C.G.S.*, §17-379 (R. 2). At that time she was within one month of attaining her eighteenth birthday and unmarried.

On April 15, 1966, a substituted information was filed (R. 4) charging appellant with two additional crimes, one alleging "lascivious carriage," in voiolation of *C.G.S.*, §53-219, the other alleging "disorderly conduct," in violation of *C.G.S.*, §53-175. On the same date, the appellant, through appointed counsel, filed a demurrer (R. 6) to the allegation appearing as the first count of the substituted information. The demurrer claimed that §17-379 was unconstitutional on its face in that it violated the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the Constitution of the United States.

After a hearing on May 13, 1966, the demurrer was overruled and a memorandum decision filed by the court (R. 7-8). Thereafter, appellant pleaded not guilty and elected to be tried to the court on all counts of the substituted information. Trial was held on June 10, 1966, and appellant was adjudged guilty of the first two counts and not guilty of the third count. The appellant was committed concurrently on the first two counts to the Connecticut State Farm for Women. She began to serve this sentence on June 10, 1966.

Appellant appealed her conviction of being in "manifest danger of falling into habits of vice," to the Appellate Division of the Circuit Court of Connecticut, assigning as error the overruling of the demurrer. No appeal was taken from the conviction under *C.G.S.*, §53-219. The Appellate Division of the Circuit Court of Connecticut held that since the

statute was non-penal, it was unnecessary to decide the constitutional questions (R. 12, 19).

Following this adverse decision, the appellant filed a timely petition for certification in the Supreme Court of Connecticut for review of the Appellate Division judgment. On December 21, 1966, the Supreme Court of Connecticut exercised its discretion and denied appellant's petition for certification (R. 20).

On February 16, 1967, the appellant was released on parole from the Connecticut State Farm for Women. She will be subject to the terms and conditions of parole until June 10, 1969.

Summary of the Argument

Although *C.G.S.*, §17-379 has been characterized by the State court as a "protective" rather than a "penal" statute, it must still comply with the standards of due process and equal protection since it permits deprivation of liberty. Thus, the State court erred when it refused to decide the constitutional questions presented (Argument I).

The terms "habits of vice" and "vicious life" are so vague and uncertain that the statute is void on its face. The terms have no fixed legal or common sense meaning that would afford an accused a clear standard of conduct. Moreover, the words are so vague that the conduct proven must be measured by the individual predilections of a judge or jury (Argument II).

The statute arbitrarily singles out unmarried females against whom to impose its sanctions. Neither males of the same age group nor married females are liable to commitment for their "habits of vice" or "vicious life." There was neither reason nor necessity for the legislature to single out unmarried females and to seek to stamp out vice and vicious behavior only in them (Argument III).

I. Whether or Not *C.G.S.*, §17-379 Is a Penal Statute, It Must Comply With the Due Process and Equal Protection Standards of the Fourteenth Amendment to the United States Constitution Because the Statute Provides the State a Procedure for Depriving Young Females of Their Liberty.

The Appellate Division of the Connecticut circuit court declined consideration of the due process and equal protection claims first raised by the appellant's demurrer. (Cp. *Wright* v. *Georgia,* 373 U. S. 284, 287, 288 (1963), on the propriety of raising constitutional issues by demurrer.) As grounds for its decision, the Appellate Division held that *C.G.S.,* §17-379 is a protective rather than a penal statute and therefore is not governed by Fourteenth Amendment standards. *State* v. *Mattiello,* 4 Conn. Cir. 55, 225 A. 2d 507, 511 (1966) (R. 12, 19). In a later case the Appellate Division affirmed the protective character of §17-379 and, although examining the identical equal protection claims raised in this case, upheld the statute's constitutionality. The due process claim of vagueness was recognized but dismissed without discussion. *State* v. *Stanley,* —— Conn. Cir. ——, —— A. 2d —— (Vol. VII, App. Div., No. 33, May 12, 1967) (Certification granted by the Connecticut Supreme Court, —— Conn. ——, 235 A. 2d 848 (Dec. 12, 1967)). Recent decisions of this Court indicate that the Appellate Division's conclusion in the instant matter was erroneous, and that the constitutional issues should have been considered.

Even if it is conceded that §17-379 is a protective statute designed to implement a *parens patriae* concern for minor females, the statute must still comply with Fourteenth Amendment standards. *In re Gault,* 387 U. S. 1, 12, 13 (1967). This Court has indicated that its concern is not whether the State labels a statute civil, penal, or protective, but whether the statute "provides the State with a

procedure for depriving [a] defendant of his liberty and his property." *Giaccio* v. *Pennsylvania,* 382 U. S. 399, 402 (1966). If a statute subjects an accused to potential loss of liberty, it must comply with due process and equal protection standards to withstand a challenge on constitutional grounds. *Giaccio* v. *Pennsylvania,* 382 U. S. 399, 402, 403 (1966); *Baxtrom* v. *Herold,* 383 U. S. 107 (1966); *Specht* v. *Patterson,* 386 U. S. 605, 608 (1967).

Section 17-379 provides a procedure for incarcerating young unmarried females in a penal institution. Such incarceration may continue for up to five years, depending on a girl's age at the time of sentencing. On its face the statute provides that a young female convicted under it

> may be committed, until she has arrived at the age of twenty-one years, to the custody of any institution, except Long Lane School, chartered . . . for the purpose of receiving and caring for females. . . .

The only institution in Connecticut chartered for the purpose of receiving and caring for females is the State Farm for Women at Niantic. Felons, misdemeanants, and those committed pursuant to §17-379 are all incarcerated there. Although girls committed pursuant to §17-379 are segregated from the felons, they participate in the same programs and receive the same treatment as adult female misdemeanants. F. LOVELAND, THE CORRECTIONAL INSTITUTIONS AND SERVICES OF CONNECTICUT 45-47 (1966). The misdemeanants include those convicted of prostitution, drug usage, intoxication, petit larceny, and other criminal offenses. *C.G.S.,* §17-360. Although the State Farm provides many rehabilitative programs and facilities, it is still a penal institution. *United States ex rel. Robinson* v. *York,* 281 F. Supp. 8, 14, 15 (D. C. D. Conn. 1968).

Recent statistics indicate that §17-379 is used extensively by the circuit court prosecutors. Within the last

seven years, some five hundred and sixty (560) girls have been charged under the statute. Of this number, nearly half have been convicted and over one-quarter have been committed to the State Farm. See Appendix A. Clearly a statute so widely used as §17-379 which allows the State to commit young females to a penal institution for up to five years cannot escape due process and equal protection scrutiny merely because the State chooses to label it "protective." Hence, the appellant submits that the Fourteenth Amendment standards do apply to §17-379 and that the Appellate Division erred in holding to the contrary.

II. The Terms "Habits of Vice" and "Vicious Life" Render *C.G.S.*, §17-379 Void for Vagueness Under the Due Process Clause of the Fourteenth Amendment to the United States Constitution Because They Fail to Afford the Accused a Clear Standard of Conduct and Fail to Provide the Trier of Fact a Legally Sufficient Standard to Measure the Conduct Proven.

A. *C.G.S.*, §17-379 Is Void for Vagueness Because It Fails to Afford an Accused a Clear Standard of Conduct.

Statutes which provide for deprivation of liberty must be adequate to inform persons accused of violation thereof of the nature and cause of the accusation against them. *Giaccio* v. *Pennsylvania,* 382 U. S. 399 (1966). The violation must be defined with appropriate definiteness and employ terms of fixed legal meaning. *Connally* v. *General Construction Co.,* 269 U. S. 385, 395 (1926). These requirements are based on the principle "that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed." *United States* v. *Harriss,* 347 U. S. 612, 617 (1947).

C.G.S., §17-379 stands condemned by the above authorities because the terms "habits of vice" and "vicious life" are so indefinite and inclusive that they deny an accused her

right "to be informed as to what the State commands and forbids." *Lanzetta* v. *New Jersey*, 306 U. S. 451, 453 (1939). Thus, as this Court noted in *United States* v. *L. Cohen Grocery Co.*, 255 U. S. 81, 89 (1921):

> Observe the section forbids no specific or definite act. . . . It leaves open, therefore, the widest possible inquiry, the scope of which no one can foresee and the result of which no one can foreshadow or adequately guard against.

Since any conduct short of moral perfection is potentially violative, it cannot be said that these terms possess the fixed legal meaning required by *Connally* v. *General Construction Co.*, 269 U. S. 385, 395 (1926) and *Giaccio* v. *Pennsylvania*, 382 U. S. 399, 402, 403 (1966).

Moreover, the terms "habits of vice" and "vicious life" lack that precise common sense meaning which would permit their vagueness to be cured by judicial delimitation. *Sproles* v. *Binford*, 286 U. S. 374, 393 (1932); *State* v. *Andrews*, 108 Conn. 209, 213 (1928). Both legal and general dictionaries indicate how numerous and varied are the meanings of "vice" and "vicious".* Thus, although they

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* Legal dictionaries define "vice" as follows:

BLACK'S LAW DICTIONARY (4th ed. 1951): "vice . . . a fault, defect or imperfection."

RADIN'S LAW DICTIONARY (1955): "vice . . . 2. A defect or imperfection; immoral conduct."

In 44 WORDS AND PHRASES (Perm. ed. 1962), the word "vice" is applied generally to defects in property, while "vicious" relates generally to a propensity in animals.

Dictionaries of general usage define the words as follows:

WEBSTER'S DICTIONARY (3d Int'l ed. 1961): "vice . . . moral depravity or corruption: evil conduct or habits: indulgence of degrading appetites . . . a wrong, degrading, or immoral habit or practice: evil behavior of a particular or accustomed kind . . . a fault or shortcoming that becomes foible . . . a moral flaw. . . ." "vicious . . . having the nature or quality of vice: violative of moral rectitude:

(footnote continued on next page)

are common words in daily use, their generality of usage has resulted in an assortment of definitions instead of any

(footnote continued from previous page)

contrary to accepted standards of right and good: . . . addicted to vice, immorality, or depravity: corrupt or dissolute in conduct: . . . missing or incompatible with a norm of excellence. . . ."

RANDOM HOUSE DICTIONARY (1967): "vice . . . 1. an immoral or evil habit or practice. 2. immoral conduct; depraved or degrading behavior: . . . 3. sexual immorality, esp. prostitution. 4. a particular form of depravity. 5. a fault, defect, shortcoming, or imperfection: . . ." "vicious . . . 1. addicted to or characterized by vice; grossly immoral; depraved; profligate: . . . 2. given or readily disposed to evil: . . . 3. reprehensible, blameworthy; wrong: . . . 4. spiteful; malicious: . . ."

MURRAY, *et al.*, A NEW ENGLISH DICTIONARY OF HISTORICAL PRINCIPLES (vol. 10, pt. 2, 1928): "vice: . . . 1. Depravity or corruption of morals; evil, immoral, or wicked habits or conduct; indulgence in degrading pleasures or practices. . . . 2. A habit or practice of an immoral, degrading or wicked nature. . . . 4. Moral fault or defect (without implication of serious wrongdoing); a flaw in character or conduct." "vicious: . . . I.1. Of habits, practices, etc.: Of the nature of vice; contrary to moral principles; depraved, immoral, bad. . . . 2. Of persons: Addicted to vice or immorality; of depraved habits; profligate, wicked. . . . 3. Falling short of, or varying from, what is morally or practically commendable; reprehensible, blameworthy, mischievous. . . ."

An extensive search of the cases reveals that where "vice" and "vicious" have been defined, the words generally have been used in relation to property or animals. See e.g., *F. Giovannozzi & Sons* v. *Luciani*, 41 Del. 211, 18 A. 2d 435 (1941). In *McGowan* v. *State*, 83 Okla. Crim. 310, 173 P. 2d 227 (1947), the phrase "vicious or immoral person", as used in a contributing to the delinquency of a minor statute, was discussed but not defined. In *Shutt* v. *Shutt*, 71 Md. 193, 17 A. 1024, 1025 (1889), Chief Justice Alvey made the following comment on the phrase "excessively vicious conduct" as applied to a divorce statute.

> "The terms "excessively vicious conduct" are very indefinite; and of the multitude of vices to which humanity is subject the Legislature has given no intimation as to the class or character of vices to which the statute was intended to apply. It would, however, be difficult to suppose that it was intended to apply to all the multiform vices to which mankind is liable, though indulged in to an excessive degree."

single precise meanings. *In re Newborn,* 53 Cal. 2d 789, 350 P. 2d 116, 121 (1960).

That the words are inadequate to inform an individual of the extent of prohibited conduct "so clearly results from their mere statement as to render elaboration on the subject wholly unnecessary." *United States* v. *L. Cohen Grocery Co.,* 255 U. S. 81, 89 (1921). A young girl is required to guard against all moral and social faults or shortcomings, and yet she is unable to ascertain from the statute the standard of morality or social value. The terms are so vague that an unmarried minor female "of common intelligence must necessarily guess at [their] meaning." *Connally* v. *General Construction Co.,* 296 U. S. 385, 391 (1926). Such vagueness, when the liberty of an individual is at stake, cannot be tolerated under our system of justice.

B. *C.G.S.,* §17-379 Is Void for Vagueness Because It Fails to Provide the Trier of Fact a Legally Sufficient Standard to Measure the Conduct Proven.

No person's liberty may be taken away merely because his conduct offends the capricious sensibilities of the trier of fact.

> It is established that a law fails to meet the requirements of the Due Process Clause if it is so vague and standardless that it leaves . . . judges and jurors free to decide, without any legally fixed standards, what is prohibited and what is not in each particular case. *Giaccio* v. *Pennsylvania,* 382 U. S. 399, 402, 403 (1966).

Section 17-379 lacks the required fixed legal standards to guide the trier of fact. In order to secure a conviction under the statute the prosecution must convince the trier that the violation charged has been proven beyond a reasonable doubt. *State* v. *Hernandez,* 154 Conn. 698, 229 A. 2d 30, 31 (1967). Yet §17-379 does not even indicate the character of conduct that might be legally cognizable as a vice or as

viciousness. The trier is left to devise a legal standard according to his own personal predilections and then to decide whether the prosecution has proven beyond a reasonable doubt that the violations of the trier's standard are in danger of becoming habitual. The process is legally absurd, and the petitioner submits that

> The result is that the application of the law depends not upon a word of fixed meaning in itself, or one made definite by statutory or judicial definition, or by the context or other legitimate aid to its construction, but upon the probably varying impressions of juries. . . . The constitutional guarantee cannot be allowed to rest upon a support so equivocal. *Connally* v. *General Construction Co.*, 269 U. S. 385, 395 (1926).

Because the terms of §17-379 are so vague and indefinite, the petitioner submits that the statute both fails to afford an accused a clear standard of conduct and fails to provide the trier of fact a legally sufficient standard to measure the conduct proven. For these reasons it is submitted that §17-379 violates the Fourteenth Amendment's Due Process Clause and must be held unconstitutional

III. *C.G.S.*, §17-379 Violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution Because, by Applying Only to Unmarried Females Between the Ages of Sixteen and Twenty-one, It Allows the State to Deprive an Arbitrarily-defined Class of Individuals of Their Liberty.

A. A Statute Which Singles Out an Arbitrarily-Defined Class of Individuals and Deprives Its Members of Basic Human Rights Violates the Equal Protection Standards of the Fourteenth Amendment.

The Equal Protection cases decided by this Court in recent years evidence two distinct tests employed to decide the issues raised. The first test requires the challenged

statutory classification to be "reasonably related to the purposes of the Act in which it is found." *Morey* v. *Doud*, 354 U. S. 457, 465 (1957). See also *Williamson* v. *Lee Optical, Inc.*, 348 U. S. 483, 489 (1955); *Rinaldi* v. *Yeager*, 384 U. S. 305, 308 (1966). The second test subjects the challenged classification to the "most rigid scrutiny" to determine whether it is "necessary to the accomplishment of some permissible state objective." *Loving* v. *Virginia*, 388 U. S. 1, 11 (1967). See also *Harper* v. *Virginia Board of Elections*, 383 U. S. 663, 670 (1966); *McLaughlin* v. *Florida*, 379 U. S. 184, 192 (1964); *Reynolds* v. *Sims*, 377 U. S. 533, 561, 562 (1964); *Korematsu* v. *United States*, 323 U. S. 214, 216 (1944); *Skinner* v. *Oklahoma*, 316 U. S. 535, 541 (1942); *United States ex rel. Robinson* v. *York*, 281 F. Supp. 8, 14 (D. C. D. Conn. 1968).

Although the circumstances under which the "necessity" rather than the "reasonableness" test will be applied have not yet been clearly demarcated, an examination of the cases reveals that the necessity test has been invoked consistently where the challenged statutory classification impinges upon a basic personal right, whether civil, political, or "human." Such circumstances were stressed in *Harper* v. *Virginia Board of Elections*, 383 U. S. 663 (1966), in which the Court said:

> We have long been mindful that where fundamental rights and liberties are asserted under the Equal Protection Clause, classifications which might invade or restrain them must be closely scrutinized and carefully confined. 383 U. S. at 670.

Thus in *Loving*, *McLaughlin*, and *Korematsu* this Court struck down discriminatory classifications which infringed upon civil rights. In all those cases the challenged statutes contained classifications drawn along racial lines. In *Reynolds* and *Harper* statutes which diluted the right to vote, a political right, were held unconstitutional. In *Skinner* and *Robinson* statutes infringing upon "sensitive

and important area[s] of human rights'' (*Skinner* v. *Oklahoma*, 316 U. S. 535, 536 (1942)) were invalidated upon equal protection grounds. *Skinner* involved a statute allowing sterilzation of certain criminals, which, according to the Court, infringed upon ''the right to have offspring.'' 316 U. S. at 536. *Robinson* involved a statute which imposed longer prison sentences upon women than men convicted of identical offenses.

If the proper interpretation of the foregoing cases is that a statute will be rigidly scrutinized and evaluated under the necessity test where it appears that its classification infringes upon basic personal rights, these rigid standards should be applied in the instant case. The right infringed by *C.G.S.*, §17-379 is a ''human'' right similar to those involved in *Skinner* and *Robinson*. It is the right of a female adolescent to develop her personality and style of life without state interference unless her conduct clearly violates the state's criminal law. The adolescent years are a crucial developmental period in the life of any individual. During those years a young woman is exposed to a variety of formative cultural experiences which shape her character as an adult. If the state arbitrarily deprives a female adolescent of the opportunity to grow to maturity in free and open society, clearly it has imposed an invidious discrimination upon her. Because §17-379 permits the state to deprive an adolescent female of her liberty arbitrarily, the appellant submits that the statute should be severely scrutinized and constitutionally upheld only if it appears to be necessary to implement a legitimate state purpose.

B. When Equal Protection Claims Are Raised, Court Inquiry Is Not Limited to the Question Whether Those Within the Statutory Classification Are Treated Equally.

Court inquiry is not limited to the question whether those within the statutory classification are treated equally, but extends to consideration of whether the clas-

sification arbitrarily discriminates between those subject to its terms and those excluded. *McLaughlin* v. *Florida,* 379 U. S. 184, 191 (1964); *Rinaldi* v. *Yeager,* 384 U. S. 305, 308 (1966). Pursuing such inquiry, this Court has held that those who have committed intrinsically the same quality of offense must be punished equally, *Skinner* v. *Oklahoma,* 316 U. S. 535, 541 (1942), and that those who are liable to substantially equal disposition must be afforded equal procedural safeguards. *Baxtrom* v. *Herold,* 383 U. S. 107, 110 (1966). Cf. *Specht* v. *Patterson,* 386 U. S. 605, 608 (1967). In subsequent sections of this argument the appellant raises claims similar to those in both *Skinner* and *Baxtrom.* Relying on *McLaughlin* and *Rinaldi,* the appellant submits that this Court has authority to consider those claims.

C. *C.G.S.*, §17-379 Arbitrarily Discriminates Between Males and Females Within the Same Age Group and in so Doing Denies Females Equal Treatment for Identical Behavior.

Section 17-379 applies only to unmarried females between the ages of sixteen and twenty-one years of age. Young women convicted under it may be committed to a penal institution for up to five years. (See Argument I, *supra.*) A male in the same age group is subject to different and considerably milder penalties under an altogether different set of categories. A young male cannot be committed for his "habits of vice" or "vicious life." In order to be subject to any kind of commitment, he must first be convicted of a substantive crime as defined in Title 53 (entitled "Crimes") of the Connecticut General Statutes. Only then can the circuit court sentence him to the reformatory under the provisions of *C.G.S.*, §17-391. Moreover, under §17-391, a young male convicted of a criminal offense would be liable to a maximum sentence of two years in the reformatory.

Two elements of arbitrary and unnecessary discrimination between the treatment of males and females appear from the foregoing comparison. First, males must be convicted of substantive criminal acts under Title 53 before they are liable to commitment. This means that they must be charged with a substantive offense and have all the elements of a criminal act proven against them. Young women, on the other hand, may be committed indefinitely upon a loose showing that they are in "manifest danger of falling into habits of vice" or are "leading a vicious life."

Assuming that society can agree on workable definitions of "vice" and "viciousness," one can assume that the legislature may wish to suppress them. However, it is impossible to comprehend why it was necessary for the legislature to make vice and viciousness legally objectionable only in young females. Female vices are no more dangerous to society than those of the male, and hence cannot be singled out as an evil mainly to be feared. *Patsone* v. *Pennsylvania,* 232 U. S. 138, 144 (1914). Neither is a "vicious" female adolescent more likely to become an adult of bad character than is a "vicious" male adolescent. Clearly, there are no "natural and substantial differences, germane to the subject and purposes of the legislation" which justify this sexual differentiation. *State* v. *Hurliman,* 143 Conn. 502, 506 (1956). See, *Gulf, Colorado & Santa Fe R.R.* v. *Ellis,* 165 U. S. 150, 165, 166 (1896).

The effect of §17-379 is to allow young men to escape punishment for conduct legally condemned in young women. The statute thus contenances unequal treatment for substantially identical behavior and in so doing violates the standards of the Equal Protection Clause as stated in *Skinner* v. *Oklahoma,* 316 U. S. 535, 541 (1942):

> When the law lays an unequal hand on those who have committed intrinsically the same quality of

> offense, . . . it has made as invidious a discrimination as if it had selected a particular race or nationality for oppressive treatment.

The second discriminatory element is the disparity of sentences to which males and females are liable. A male convict, sentenced pursuant to *C.G.S.*, §17-391, is liable for a maximum term of two years in the reformatory. Under §17-379, however, a young woman may be sentenced indefinitely to the State Farm for Women. This means that she is liable for a maximum term of five years, depending upon her age at the time of sentencing. Such disparity, which subjects females to greater liability than males, falls squarely within the proscription of *United States ex rel. Robinson* v. *York*, 281 F. Supp. 8 (D. C. D. Conn. 1968). There the court, in ruling upon *C.G.S.*, §17-360, stated:

> Insofar as the future protection of society is concerned, the state has failed to carry its burden in support of the proposition that a greater period of imprisonment is necessary for the deterrence of women than for men. And it is hardly an open question that women, as such, do not deserve greater punishment than men. In our society any discrimination in the treatment of women is benignly in their favor. 281 F. Supp. at 16.

D. *C.G.S.*, §17-379 Arbitrarily Discriminates Between Married and Unmarried Females Within the Same Age Group and in so Doing Denies Unmarried Females Equal Procedural Protection Against Deprivation of Their Liberty.

Arbitrary procedural disparities are among the statutory distinctions violative of equal protection standards. *Baxtrom* v. *Herold*, 383 U. S. 107, 110 (1966). Where there is no legitimate reason for distinguishing between two classes

of individuals and both classes are liable to the same disposition, equal protection standards demand that both classes receive the same procedural protection. *Id.* at 114, 115.

In Connecticut, no matter whether a young woman is married or single, upon her conviction in the circuit court, she is sentenced to the State Farm for Women. *C.G.S.*, §17-360. All inmates, with the exception of felons, receive the same treatment at the State Farm. F. LOVELAND, THE CORRECTIONAL INSTITUTIONS AND SERVICES OF CONNECTICUT 45-47 (1966).

If a young woman is married, she cannot be committed to the State Farm without having first been convicted of a criminal offense under Title 53 of the General Statutes. On the other hand, §17-379 allows a single female of the same age to be committed to the State Farm following a proceeding in which the evidentiary requirements for conviction are so lax that they appear legally standardless. All that must be proven against a single female is that she has somehow violated the trier of fact's personal morality. (See Argument II., B., *supra.*) It is submitted that there is no reason, much less a necessity, for such procedural disparity. To allow an accused's procedural rights to turn on whether she is married or single is an invidious discrimination and a denial of equal protection under the authority of *Baxtrom* v. *Herold,* 383 U. S. 107 (1966).

Upon the basis of the foregoing analysis, the appellant submits that the classification §17-379 embodies permits the State to impose an invidious discrimination upon its unmarried female adolescents. Hence §17-379 cannot withstand the rigid scrutiny that equal protection standards demand, and for this reason must be held unconstitutional.

E. Even if the "Reasonableness" Test Should Be Applied in the Instant Case, *C.G.S.*, §17-379 Cannot Survive a Challenge on Equal Protection Grounds.

According to *Rinaldi* v. *Yeager*, 384 U. S. 305, 309 (1966), court inquiry under the reasonableness test is directed toward determining whether the distinctions focused upon in the statute as classifying features bear a reasonable relation to the legislative purpose. The classifications embodied in *C.G.S.*, §17-379 focus on sex and marital status. Neither of these foci reflect a reasonable relation to the manifest legislative purpose—to control vice and vicious behavior. Such conduct is as objectionable in males and in married females as it is in unmarried females. Thus "there is no fair reason for [this] law which would not require with equal force its extension to others whom it leaves untouched." *Sanger* v. *Bridgeport*, 124 Conn. 183, 189 (1938). Consequently, the appellant submits that §17-379 on its face arbitrarily denies unmarried females equal protection of the law and for this reason is unconstitutional.

CONCLUSION

For the reasons stated above, this Court should reverse the judgment and sentence of the Appellate Division of the Circuit Court of Connecticut and hold that *C.G.S.*, §17-379 is unconstitutional as applied to unmarried females between the ages of sixteen and twenty-one.

Respectfully submitted,

ROBERT N. GROSBY,
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Attorneys for Appellant.

July 18, 1968.

APPENDIX

APPENDIX A

Statistical Summary of Proceedings Under *C.G.S.*, §17-379

PROCEEDINGS PURSUANT TO SECTION 17-379 CONNECTICUT GENERAL STATUTES, 1961-1967.*

	Number	*Percentage*
Total cases:	560	100.0%
Found guilty:	256	45.8%
Nolle prosequi:	179	31.9%
Found not guilty:	54	9.6%
Referred to the Juvenile Court:	47	8.4%
Boundover to the Superior Court:	24	4.3%

INDIVIDUALS COMMITTED TO THE CONNECTICUT STATE FARM FOR WOMEN PURSUANT TO SECTION 17-379 CONNECTICUT GENERAL STATUTES, 1961-1967.**

Year	*Number*
1961	21
1962	20
1963	26
1964	25
1965	24
1966	17
1967	15
Total:	148

Total committed is equal to 26.4% of total cases.

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* Source: State of Connecticut, Circuit Court, Statistical Reports, Section G, January 1, 1961-November 30, 1967.

** Source: Division of Records, Connecticut State Farm for Women, Niantic, Connecticut.

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IN THE

Supreme Court of the United States

October Term, 1968

No. 150

FRANCES MATTIELLO,

Appelant,

v.

STATE OF CONNECTICUT

Appellee.

ON APPEAL FROM THE APPELLATE DIVISION OF THE CIRCUIT COURT OF CONNECTICUT

BRIEF OF APPELLEE

GEORGE F. CARROLL, JR.,
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First Circuit, Norwalk
Attorney for Appellee

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IN THE

Supreme Court of the United States

OCTOBER TERM 1968

No. 150

FRANCES MATIELLO

Appellant

vs.

STATE OF CONNECTICUT

Appellee

ON APPEAL FROM THE APPELLATE DIVISION OF THE CIRCUIT COURT OF CONNECTICUT

BRIEF OF APPELLEE

Constitutional Provision and Statutes Involved

In addition to those set forth in appellant's brief, the following are believed to be relevant:

1. Connecticut General Statutes

§ 17-390. Detention for offense punishable by prison or jail sentence

Any offender sentenced to the reformatory by the superior court for any offense punishable by imprisonment in the State Prison may be detained in the reformatory not more than five years, unless he has been sentenced for a longer term, in which case he may be held for such longer term. Any offender sentenced to the reformatory for an offense for which the maximum punishment is a sentence to a jail, with or without a fine, may be detained in the reformatory not more than two years. (1949 Rev., § 2773.)

2. Connecticut General Statutes

§ 17-360. Commitment

Women over sixteen years of age belonging to any of the following classes may be committed by any court of criminal jurisdiction to said institution: First, persons convicted of, or who plead guilty to, the commission of felonies; second, persons convicted of, or who plead guilty to, the commission of misdemeanors, including prostitution, intoxication, drug-using and disorderly conduct; third, unmarried girls between the ages of sixteen and twenty-one years who are in manifest danger of falling into habits of vice or who are leading vicious lives, and who are convicted thereof in accordance with the provisions of section 17-379; fourth, women sentenced to jails. Only such offenders may be committed to said institution as in the opinion of the trial court will be benefited physically, mentally or morally by such commitment, and, immediately upon commitment, a careful physical and mental examination, by a competent physician, shall be made of each person committed. The court imposing a sentence on offenders of any class shall not fix the term of such commitment. Commitment to said institution shall be made within one week after sentence is imposed, but no offender shall be committed to said institution without being accompanied by a woman in addition to the officer. The trial court shall cause a record of the case to be sent with the commitment papers on blanks furnished by the institution. The duration of such commitment, including the time spent on parole, shall not exceed three years, except when the maximum term specified by law for the crime for which the offender was sentenced exceeds that period, in which event such maximum term shall be the limit of detention under the provisions of this chapter, and, in such cases, the trial court shall specify the maximum term for which the offender may be held under such commitment. (1961, P.A. 580, § 4.)

Questions Presented

1. Is the judgment of the Circuit Court of Connecticut supported on independent state grounds, namely the conviction and sentence on the lascivious carriage charge from which no appeal was taken?

2. Can appellant prove that *C.G.S.* (Sec 17-379) is unconstitutionally vague without showing that as applied to the facts in her own case the statute was so vague and uncertain that she was not presented with an ascertainable standard of guilt?

3. Did appellant's conviction and sentence under *C.G.S.* (Sec 17-379) violate the due process clause and the equal protection of the laws clause of the United States Constitution?

Statement of the Case

The appellant, an unmarried woman born April 15, 1949, was charged with: "being in manifest danger of falling into habits of vice", Sec. 17-379, *Conn. Gen. Statutes*, lascivious carriage, Sec. 53-219, and disorderly conduct, Sec. 53-175.

She demurred to the information as to Sec. 17-379, attacking the statute on two grounds: (1) unfair discrimination against certain females, (2) vagueness. The demurrer was overruled, she pleaded not guilty, and there was a trial to the court. The evidence revealed a lack of supervision over appellant's activities and bizarre and promiscuous sexual conduct involving many men and much drinking.

At the conclusion of the trial appellant was found guilty of violating Sections 17-379 and 53-219. She was sentenced to the Connecticut State Farm for Women, sentences to run concurrently. She appealed the overrulling of the demurrer. She did not appeal her conviction for lascivious carriage. There was no appeal from any of the doings at the trial, and the evidence is not before this court.

The Appellate Division of the Circuit Court of Connecticut upheld appellant's conviction. Application for certification to the Supreme Court of Connecticut was denied.

Appellant was at all times represented by guardian and counsel.

Summary of the Argument

Appellant was convicted of violating *C.G.S.* Sec. 53-219 at the same time she was convicted under *C.G.S.* Sec. 17-379. She received concurrent indeterminate sentences to the Connecticut State Farm for Women. Thus, the judgment and sentence are supported on the lascivious carriage disposition and this was not appealed.

The applicant cannot prove unconstitutional vagueness without reference to the facts of the case as brought out during the testimony. Said facts are not before the Court.

Appellant's conviction and confinement under *C.G.S.* Sec. 17-379 are not in violation of the due process and equal protection clauses of the United States Constitution.

I. The Judgment and Sentence are Supported on Independent State Grounds, Namely the Conviction and Sentence on the Lascivious Carriage Charge from which No Appeal Was Taken.

Appellant was tried and convicted of the crime of lascivious carriage *C.G.S.* Sec. 53-219 at the same time as her trial and conviction on the charge of being in manifest danger of falling into habits of vice. She was sentenced to the Connecticut State Farm for Women on each charge, sentences to run concurrently.

Two sections of the Connecticut General Statutes refer to commitment to the Connecticut State Farm for Women. Sec. 17-360 entitled "Commitment" is in Chapter 309,

Part I, "The Connecticut State Farm for Women". Sec. 17-379 entitled "Commitment of girls over sixteen" is in Chapter 309, Part III, "Miscellaneous Agencies". Both sections provide for commitment of unmarried young women between the ages of sixteen and twenty-one who are "in manifest danger of falling into habits of vice" to the Connecticut State Farm for Women. Sec. 17-360 also provides, *inter alia*, that "women over sixteen years of age" may be committed to the Connecticut State Farm for Women if convicted of "the commission of misdemeanors, including prostitution, intoxication, drug-using and disorderly conduct". Sec. 17-379 provides that any unmarried female between the ages of sixteen and twenty-one "who has committed any crime" may be committed to institutions that receive and care for "females who have fallen or are in danger of falling into vicious habits".

Under Sec. 17-360, the maximum duration of commitment including time spent on parole, is three years except where the maximum sentence for the crime of which the offender was convicted exceeds that period. Under Sec. 17-379, the maximum duration of commitment is until the offender becomes twenty-one.

Both of appellant's convictions come within both Sec. 17-360 and Sec. 17-379. At the time of her conviction, appellant was seventeen, so the three years would expire before she reached twenty-one. It seems clear that any ambiguity as to maximum duration of sentence would have to be resolved in her favor, and that the three year limit would apply. See Appendix A. This would apply equally to the "manifest danger" conviction and the lascivious carriage conviction. There has been no appeal from the lascivious carriage conviction. It stands without any infirmity and it supports the sentence of the Connecticut Court independently of the "manifest danger" conviction.

It is settled law, as stated in *Classen v. United States*, 142 U.S. 140, 146-147 (1891) that in any criminal case a general verdict and judgment on an indictment or information containing several counts cannot be reversed on error, if any one of the counts is good and warrants the judgment, because, in the absence of anything in the record to show the contrary, the presumption of law is that the court awarded sentence on the good count only.

The same rule applies to concurrent sentences. "The conviction under the second count is without constitutional infirmity. Hence we have no occasion to review the conviction on the first count, since, as we have already stated, the sentences on the two counts are to run concurrently and conviction on the second is sufficient to sustain the sentence". *Hirabayashi v. United States*, 320 U.S. 81, 105 (1943). See also *Pinkerton v. United States*, 328 U.S. 640 (1946) and *Lawn v. United States*, 355 U.S. 339, 362 (1958), and *Lanza v. N.Y.*, 370 U.S. 139 (1962) *United States v. Romano* 382 U.S. 136, 138 (1965).

II. The Appellant Cannot Prove Unconstitutional Vagueness of Sec. 17-379 C.G.S. Without Showing That As Applied to the Facts of Her Own Case the Statute Was So Vague and Uncertain That She Was Not Presented with an Ascertainable Standard of Guilt.

After appellant's demurrer was overruled she pleaded not guilty and elected a court trial. There followed a full trial on the merits and a finding of guilty. Appellant appealed her conviction on the sole ground that the overruling of the demurrer was in error.

There is no transcript of the testimony before the Court, no indication of what conduct of appellant led to her conviction. Yet she says in effect that the Court should declare Sec. 17-379 *C.G.S.* unconstitutionally vague because

"A young girl is required to guard against all moral and social faults or shortcomings, and yet she is unable to ascertain from the statute the standard of morality or social value" — Appellant's brief, pg. 12.

Sec. 17-379 is not patently vague on its face. If the Court had before it the evidence of appellant's conduct which led to the conviction, it would be in a position to judge the conduct and the application of the statute to it.

"The appellant seeks to prove his point by suggesting hypothetical cases taken from the peripheral areas of the statute's scope; but he can derive no assistance from that source. He must show that, as applied to his own case, the statute was so vague and uncertain that he was not presented with an ascertainable standard of guilt". *United States v. Irwin* 354 F.2d 192, 196 (1965).

"Void for vagueness means that criminal responsibility should not attach where one could not reasonably understand that his contemplated conduct is proscribed. *United States v. Harriss* 347 U.S. 612, 617 (1954). In determining the sufficiency of the notice a statute must of necessity be examined in the light of the conduct with which a defendant is charged. *Robinson v. United States* 324 U.S. 282 (1945), *United States v. National Dairy Corp.* 372 U.S. 29, 32, 33 (1963).

The Supreme Court of Connecticut has also passed on this point of law. "There is no finding of facts, nor were there any claims of law. The record includes neither the booklets which were alleged to contain obscene or indecent language or pictures nor any of the verbal testimony or other evidence. It may well be that the language and pictures contained in the booklet were patently obscene and that it was obvious from all the circumstances that the defendant knew that they were. It is true that when a demurrer is overruled and the defendant pleads over and goes to trial on the merits, these questions may not present

any reversible error when reviewed in the light of the facts found by the trial court from evidence properly received under the pleadings and in the light of the application of the law to the facts". *State v. Sul* 146 Conn. 78, 82 (1958). "A statute may operate in a manner consistent with constitutional requirements when applied to one set of circumstances, although as to another it may produce a result which makes its operation unconstitutional". *Ibid.*, 81. While the Court in the *Sul* case did proceed to review the constitutional issues, even though they were improperly raised, it is submitted that the principle of law involved is by now so clearly and firmly established under Federal and Connecticut decision that the Court should refuse to examine this statute in *vacuo*. The reasons for this, as set forth above, are not merely technical and procedural; they go to the very essence of the Court's ability to pass on the constitutionality of the statute here involved.

III. Appellant's Conviction and Confinement Under C.G.S. Sec. 17-379 Are Not in Violation of the Due Process or Equal Protection Clauses of the Constitution.

A. In Light of the Purpose of the Legislation and the Safeguards Afforded Appellant in this Case, No Further Application of Constitutional Standards Is Required.

It is clear from an examination of Sec. 17-379 and related statutes that its purpose is to reclaim and rehabilitate certain young women from a self-destructive and society-destructive life. To be sure, confinement in an institution is involved. However, this penal feature is more than outweighed by the protective and beneficial nature of the legislation. "Only such offenders may be committed to said institution as in the opinion of the trial court will be benefited physically, mentally or morally by such commit-

ment . . ." *C.G.S.* Sec. 17-360. See Appendix B, minutes of the hearing before the Connecticut Senate Humane Institutions Committee on the bill to establish a state farm for women, February 21, 1917. The Farm was established in 1918.

In *In re Gault* 387 *U.S.* 1 (1967), the sentence also involved confinement in an institution. Unlike young Gault, Miss Mattiello had and exercised her rights to: notice of charges, counsel, confrontation, and cross-examination. She had and exercised her privilege against self-incrimination. Here was a full trial on the merits, and nothing concerning the conduct of the trial is challenged. Having been adjudged in "manifest danger of falling into habits of vice," appellant attacks the substance of the statute as "vague" and the sentencing provisions as discriminatory. In *Gault,* the Court said, at pg. 27, " . . . nor do we here rule upon the question whether ordinary due process requirements must be observed with respect to hearings to determine the disposition of the delinquent child."

The fact that confinement is involved should not obscure the facts that here (1) appelant received the full measure of protection as required by this Court in the *Gault* decision; (2) the clear purpose of the confinement was not to punish but to provide opportunity to correct before it is too late; (3) vice, like obscenity and libel, is not a constitutionally protected area. See *Roth v. United States* 354 U.S. 476 (1957).

The right of the state to control the conduct of children is broader than its authority over adults. The statute here under attack seeks to save young women from a life of crime and vice and its constitutionality should be judged with that purpose in mind. See *Prince v. Massachusetts,* 321 U.S. 158 (1944), and *Ginsberg v. New York,* 390 U.S. 629 (1968).

B. Even if the Equal Protection Clause is Applicable, it was not Violated as to Appellant.

Appellant argues that she is discriminated against *vis-a-vis* married women and *vis-a-vis* young men. Sec. 17-360 places a limitation of three years, including time spent on parole, for a "manifest danger" sentence. This, or the twenty-one years of age limitation under Sec. 17-379 would apply, depending on which is less in a given case. See Appendix A. In this case, the three-year limitation is applicable to the appelant, as it is to married women committed under 17-360. Appellant was seventeen at the time of her commitment.

The legislature did not make "manifest danger of falling into habits of vice" a ground for commitment of married women. Neither is adultery an offense of which a single woman could be convicted and sentenced, *C.G.S.* Sec. 53-218. A married woman, however, could be convicted of adultery and sentenced to the State Farm for Women *C.G.S.* Sec. 17-360. Other offenses, such as bigamy *C.G.S.* Sec. 53-221, and abandonment of spouse and cohabitation with another, *C.G.S.* Sec. 53-222, are of course applicable only to married persons, and in the case of women, subject them to commitment to the State Farm. The legislature determined that there was a need for additional legislation, designed specifically to protect young unmarried women and to regulate their conduct. The conduct of such persons, without husbands and often without a home, is a proper subject of regulation within the framework of the statutory language.

Appellant also contends that Sec. 17-379 discriminates against her in that males in the same age group are not liable to conviction for being in "manifest danger of falling into habits of vice." She further argues that there is an unconstitutional disparity of sentence between young unmarried females and young males.

The Fourteenth Amendment does not interfere with state legislation differentiating between the sexes by "creating a fictitious equality where there is a real difference. The particular points at which that difference shall be emphasized by legislation are largely in the power of the State." *Quong Wing v. Kirkendall* 223 U.S. 59, 63, (1912).

An example of a "real difference" is the maternal function and the interest of the State in the future of the race. ". . . she is properly placed in a class by herself, and legislation designed for her protection may be sustained even when like legislation is not necessary for men, and could not be sustained." *Muller v. Oregon* 208 U.S. 412 (1908), See also *West Coast Hotel Co. v. Parrish* 300 U.S. 379 (1936), *Grunewald v. Gardner* 390 F 2d 591 (1968), *United States v. Cocklin* 178 F Supp 318 (1959).

"For a State is not constrained in the exercise of its police power to ignore experience which marks a class of offenders or a family of offenses for special treatment. Nor is it prevented by the equal protection clause from confining its restrictions to those classes of cases where the need is deemed to be clearest." *Skinner v. Oklahoma* 316 U.S. 535, 540 (1942) and cases there cited.

While Section 17-391, *C.G.S.*, quoted in appellant's brief, places a maximum limitation of two years on Circuit Court reformatory sentences of certain males, the same limitation does not apply to reformatory sentences by the Superior Court. See Sec. 17-390 *C.G.S.* quoted *supra.* Thus, males between sixteen and twenty-one convicted of felonies may be sentenced for five years. Women sentenced to the State Farm for felonies are not subject to a comparable increase in duration of sentence.

"We think that with reference to the public proclaiming of religion, upon the streets and in other similar public places, the power of the state to control the conduct of children reaches beyond the scope of its authority over

adults, as is true in the case of other freedoms, and the rightful boundary of its power has not been crossed in this case." *Prince v. Massachusetts,* 321 U.S. 158, 170 (1944).

In *Ginsberg v. New York,* 390 U.S. 629, (1968) this Court cited *Prince v. Massachusetts* with approval and affirmed the principle that the State has an interest to protect the welfare of children and to see that they are safeguarded from abuses which might prevent their proper development.

Even if the Court were to adopt the reasoning of *United States ex rel. Robinson v. York,* 281 F. Supp. 8 (D.C. Conn. 1968) cited at page 18 of appellant's brief, the following rule, in the language of that opinion at page 18, would be applicable: "It is also the rule that a sentence which is invalid because it is in excess of what the law permits is not invalid in its entirety, but only as to that portion which exceeds what is permissable." Thus, if the "disparity of sentence" argument prevails, the maximum sentence becomes two years instead of three.

C. Even if the Due Process Clause is Applicable, C.G.S. Sec. 17-379 is not Void for Vagueness.

While it is axiomatic that criminal statutes must be strictly construed, this rule does not require that the narrowest technical meaning be given to the words employed in disregard of their context and in frustration of the obvious legislative intent. *United States v. Corbett,* 215 U.S. 233, 242 (1909), *State v. Faro,* 118 Conn. 207, 274 (1934).

No more than a reasonable degree of certainty can be demanded of a criminal statute, and it is not unfair to require that one who deliberately goes perilously close to an area of proscribed conduct shall take the risk that he may cross the line. *Boyce Motor Lines v. United States,* 342 U.S. 337 (1952).

The words of Sec. 17-379 are not vague and uncertain. The word "vice" must be read in the context of the general statutory scheme and in juxtaposition to the phrase "or who has committed any crime" in the section. Thus it can be fairly construed that the type of vice referred to is that of which the criminal law takes cognizance. It is clear that only *serious* misconduct is proscribed. The danger must be *manifest,* and *habits* of vice, not an isolated act, must be involved. The trier had these words to work with, and he had to apply them to appellant's conduct as he heard the evidence. It is submitted that the words of Sec. 17-379 pose no great problem to the trier nor do they fall short of giving fair notice to the prospective offender, when compared with other statutory language that courts are daily called upon to interpret and apply, e.g. "obscene," "lewd," "lascivious," "indecent," "moral turpitude," "willful or wanton misconduct."

"Manifest" means "capable of being readily and instantly perceived by the senses, especially by the sight, not hidden or concealed, open to view . . . capable of being easily understood or recognized at once by the mind, not obscure, obvious. . ." *Webster's 3rd New International Dictionary of the English Language (Unabridged)* (1961). See also *The Random House Dictionary of the English Language (Unabridged)* (1966): "readily perceived by the eye or understanding; evident; obvious. . ."

Webster's defines "habit" as ". . . a behavior pattern acquired by frequent repetition or developed as a physiologic function and showing itself in regularity. . ."

"Vice" is defined by *Webster's* as "moral depravity or corruption, evil conduct or habits, indulgence of degrading appetites, wickedness, a wrong, degrading or immoral habit or practices . . . sexual immorality esp.; Prostitution." *Random House* defines vice as "an immoral or evil habit or practice, immoral conduct, depraved or degrading behavior: a life of crime and vice."

The dictionaries tell us what any reasonable person knows. There is nothing obscure or vague about the words of the statute. When considered in the context of what this corrective legislation seeks to achieve, it is abundantly clear that only unmarried young females who are a manifest menace to themselves and society are within its purview.

"This Court goes far to uphold state statutes that deal with offenses difficult to define, when they are not entwined with limitations on free expression." *Winters v. New York* 333 U.S. 507, 517 (1948). See also *Ginsberg v. New York,* 390 U.S. 629 (1968), *Roth v. United States* 354 U.S. 476 (1957).

CONCLUSION

For the reasons stated above, this Court should either decide that jurisdiction should not have been granted or affirm the conviction.

Respectfully submitted,

GEORGE F. CARROLL, JR.
Prosecuting Attorney
Circuit Court of Connecticut
First Circuit, Norwalk

APPENDIX

APPENDIX A

STATE OF CONNECTICUT

ATTORNEY GENERAL'S OFFICE

HARTFORD

December 30, 1958

Miss Elizabeth B. MacKenzie
Superintendent
State Farm for Women
Niantic, Connecticut

Dear Miss MacKenzie:

In your memorandum of December 17, 1958, you have asked our advice concerning Section 2761 and Section 2745 of the General Statutes, Revision of 1949. In your letter you stated as follows:

"May we have your interpretation of two sections of the statutes, Section 2761 and Section 2745.

"Section 2761, entitled Commitment of Girls Over Sixteen, states in part, 'Any unmarried female between the ages of 16 and 21 who is in manifest danger of falling into habits of vice . . . upon conviction thereof may be committed until she has arrived at the age of 21 years to the custody of any institution . . . '.

Our questions are these:

"1. If a girl is committed to us whose age is such that there are more than three years from the date of her commitment to her 21st birthday, may she be held under the supervision of the institution until she is 21?

"2. If her date of commitment is less than three years to her 21st birthday, does she have to be released from the supervision of the institution when she arrives at the age of 21?

"3. In the event that your opinion is that such an inmate may be held beyond her 21st birthday, would she automatically then come within the provisions of Section 2742, the last sentence of which states 'the duration of such commitment including time spent on parole shall not exceed three years . . .' ?

"With respect to Section 2745, entitled Escape of Inmate, which gives the Directors of the Institution power to add an additional year to the time of an inmate who escapes, is this statute applicable to a girl who has been committed under the Manifest Danger charge (Section 2761)?"

Section 2761, as amended by Section 1568d of the 1955 Supplement, is a statute of general application and provides that any unmarried female person between the ages of 16 and 21 years convicted under the terms of this statute may be committed until such person arrives at the age of 21 years to the custody of any institution, except Long Lane School, chartered by the General Assembly or incorporated under the general laws, for the purpose of receiving and caring for females.

In order to determine the length of a committment to your institution, we must look to Section 2742, which pertains to the State Farm for Women and specifies three classes of female persons who may be committed to the Connecticut State Farm for Women. We are concerned only with the third class mentioned in Section 2742. This class is for those persons who have been convicted in accordance with the provisions of Section 2761. When a Court commits to the State Farm for Women a female person convicted under Section 2761, the commitment to

the State Farm is under the authority contained in Section 2742. This statute provides that comitments to your institution shall be for an indefinite term and it further provides that "The duration of such commitment, including the time spent on parole, shall not exceed three years".

In reply to your first question, it is our opinion that when a girl is comitted to the State Farm for Women under Section 2742 by virtue of having been convicted under Section 2761, the maximum term for which she can be held at the State Farm for Women is three years.

With reference to your second question, Section 2761, as amended by Section 1568d, provides that any person convicted under this statute may be committed until she arrives at the age of twenty-one years. It is our opinion that this age limitation applies to persons committed to the State Farm under Section 2742.

Answering your specific question, a person who arrives at her twenty-first birthday in a period of less than three years from the date of commitment must be released upon reaching the age of 21 years.

In view of our answer that a person committed under Section 2742 after conviction under Section 2761 cannot be held at the State Farm for Women beyond her twenty-first birthday, it is not necessary to discuss your third question.

(The final paragraph of this letter was not pertinent to the subject, and has therefore been deleted.)

Very truly yours,

John J. Bracken
Attorney General

By Raymond J. Cannon
Assistant Attorney General

APPENDIX B

HUMANE INSTITUTIONS COMMITTEE

Hearing Feb. 21, 1917. (Excerpt)

S.B. No. 12 (Sen. Hemenway) Concerning reformatory for women.

S.B. No. 126 (Sen. Lyman) Concerning state farm for women.

Senator Bartlett:

I want to say just a word in favor of this proposition generally. We want something that provides some sort of institution for delinquent women. The point has been reached in the State of Connecticut where it would be a great credit to the State and in the duty of the State at this time to provide some sort of institution, farm, reformatory or something that people better qualified could work out. Without any question I wish to appear and be noted in favor of the proposition in general.

Senator Lyman:

I wish to say to the Committee that it gave me a great pleasure to endorse the measure which was drawn by Prof. Bailey. I believe that it is the best bill that has been presented to Legislature of its kind.

Senator Koppleman:

I have read these bills and I simply desire that the Committee may know that I am in favor of the propositon and trust that a favorable report will be made by this Committee to the Legislature.

Senator Hemenway:

I have talked with the members of the Conn. Prison Association and as far as I am concerned my bill need not be considered as a bill and I understand that the Prison Association wish to be included in whatever bill shall be recommended by the Committee.

C. M. Holloway:

During the course of my experience along this line I find a need of an institution of this kind and it would really be a crime if we were to defer it.

Prof. Bailey:

I submit this bill in place of Bill No. 126 which embodies certain recommendations of Senator Hemenway and can be considered a substitute for the two bills under consideration.

Four years ago Gov. Baldwin appointed a Committee consisting of five members, two women and three men, for investigating the advisability for a reformatory in this state. That committee studied the matter for a year and a half and finally handed in a report advising such an institution and with their report embodied a law. That bill was heard before the Committee on Humane Institutions and received a favorable report. It was then read by the Committee on Appropriations and was heard no further. It seemed best to the Conn. Prison Ass'n two years ago to continue the study of this matter of a reformatory for women and therefore a committee was appointed of which Miss Mary A. Goodman was Chairman. This committee was composed of about twenty members. They divided themselves up into several sub-committees and I believe that there is no single bill that has received the study and attention that has been given this particular bill at the hands of these women.

I should like to take up the question of the necessity of a reformatory for women in this state. As you know there is no public penal institution to which delinquent women over the age of 16 years can be sent except States Prison or County Jail. I do not believe that anyone will need to state that the County Jails cannot be classed as reformatories. I have placed on the desk of each one of you a short tabulated statement of the number of women who were committed to jails of this state last year, the number of days they spent in jail, the cost and the proportion that were repeaters. About one-half of the women sent to jail in the state are sent there again. There is no classification of inmates, there is no attempt at reform and they learn a little more wickedness than they knew before they went there. The cost to the State for these women is about $120,000.00 a year and it is an expense that is incurred without reforming anyone, without doing any good for these women, the net result of which is to make them worse than when they went there. Therefore it seems as though Connecticut could not only afford to have a reformatory but cannot afford to go without one when it comes to the mere matter of dollars and cents. When it was decided to study this matter further and it became evident something ought to be done we asked the best authority to come to the State of Connecticut and give an address on this subject.

When it was deemed best to establish some sort of institution for women it became the question of what sort of institution. Here the Committee made a more carefuly study than has ever been made by this Committee and this bill was finally picked out. You certainly ought to get the reformatory this year and I hope you will. The State Board of Charities in their annual report favor it, the Conn. Prison Association, the Connecticut Humane society, the Daughters of Veterans, the State Temperance Union, the Conn. Federation of Mothers have come out in favor of this bill and have been very active in their interest in favor of it.

Now in regard to this institution. First, it will be in the Country, it will be a farm colony. A great many of these women are shot to pieces by drink or drugs and we wish to cure them of these habits. It is frequently possible to do this.

I have visited reformatories for women and the girls work out in the fields, raising the foods for these institutions. It is a good thing for them. Then it will have a training school. No girl will be allowed to leave until she is able to do some one thing. She will not be allowed to leave until she has worked her way up from the first grade to the last grade. Whether she can go out or not will not depend upon any pull from her relatives but from the merits of her own work and as soon as the Board feel she is able to work and earn her own living. She will be put on parole and if she breaks her parole she will be brought back again. They will be sent to this institution until cured and until the directors think that when released they will make decent women. This institution will be under the control of a woman superintendent and a board of directors, three women and four men. I think there should be both men and women on the Board and a woman superintendent to run the institution. There should be about 200 acres of land. The more land the cheaper the institution can be run. We ask for $50,000.00. It is a modest sum. With $50,000.00 we hope to purchase at least 200 acres of land and farm buildings. It should be near a railroad. When it becomes necessary to enlarge the buildings another small building may be built. It should be possible to run this institution for about $200.00 an inmate. This institution in time ought to care for most of the criminal women in the state. It would be possible before long to empty the jails and have all women that are sent to jail, sent to this institution. We are spending every year on the women in our jails enough to run an institution of one hundred inmates. In fact a reformatory for one hundred would mean a perfect reformation of one hundred women. As it is now it means the expense without any reform.

Senator Russell:

How many do you suppose there might be?

Prof. Bailey:

From 150 to 200 women if you had an institution as large as I suggest and you would not need to have any woman in the jails of this state.

Valeria M. Parker, Representing Conn. Society of Social Hygiene:

I want to speak from a first hand knowledge of these women whom I learned to know best when I served as Probation Officer. The present method is too expensive. The state is spending enormous sums and it is doing nothing for the women. They are worse off after they have served their sentence than before. The proof of this lies in the fact that so many are serving many sentences. Out of the fifty women who were at one time in our county jail but two were serving first sentence. There were many who were serving their 40th or 50th sentence. The money that is being spent on these women is not being spent wisely. The young women from 16 to 21 years of age may be admitted to only one of two private institutions, one Catholic and one Protestant. There is serious objections to having state wards admitted to private institutions. For the women over 21 years of age there is nothing but the jail or states prison. We have, however, a custom of fineing these women and sending them out to earn their fine and they frequently earn the money to pay their fine by comitting the same crime for which they were arrested. There is another custom in Connecticut, that is the custom of sending a woman with one or more children to the Town Farm. We had a flagrant case of this in one of the town farms of this state. The woman had been turned away from home because she was to have a child and she was not married. Nine months ago this woman gave birth to a fourth child. The father was an inmate of the town farm. One of the authorities of the town stated that it was an

unavoidable instance. Such instances should be made avoidable. You are to consider this from the side of expense. The cost of human misery cannot be estimated. In other states there are three facts that have been found out about women admitted to reformatories. First the fact that although there are many classes of women admitted for other offenses other than immorality the majority are so charged. The second fact is the fact that a majority of these women are diseased and this strikes at the root of family life. These women go out from jail without any help to retrieve themselves. The third fact is that a very large percentage are found to be feeble minded. They are of the far more dangerous type. As a rule the outward appearance is normal but upon examination they are found to have a child's mind and a woman's body and these women become the victims of a class of men about whom you know. These are the women we want to help. As we are dealing with them at the present time they are raising larger families than the perfect woman and these children of degenerate parents are to become the citizens of this state. We want to protect these women who are not fitted to be mothers and keep them guarded.

It is your privilege to start this bill towards its favorable consideration and we ask you to consider the wide spread interest that is now in the state in regard to this bill. There are men and women who have grown white haired in the cause. We ask you to use your efforts in behalf of this bill.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 150

FRANCES MATTIELLO,

Appellant,

v.

STATE OF CONNECTICUT,

Appellee.

ON APPEAL FROM THE APPELLATE DIVISION OF THE CIRCUIT COURT OF CONNECTICUT

REPLY BRIEF OF APPELLANT

ROBERT N. GROSBY,
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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 150

FRANCES MATTIELLO,

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ON APPEAL FROM THE APPELLATE DIVISION OF THE CIRCUIT COURT OF CONNECTICUT

REPLY BRIEF OF APPELLANT

I.

The Judgment Under C.G.S. § 17-379 Is Within the Court's Jurisdiction to Review.

The appellee contends that this Court lacks jurisdiction in the instant case because appellant's conviction on the second and unappealed count is sufficient to sustain the concurrent sentences imposed. Appellee's brief, pp. 6-8. Appellee's underlying assumption is that the separate sentences under *C.G.S.* § 17-379 and § 53-219 are coextensive

as well as concurrent. Appellant argues, however, that the constitutionally permissible length of the § 53-219 sentence is substantially less than the sentence imposed under § 17-379. Moreover, she urges that her present custody is based solely on the "manifest danger" conviction. Thus, the rule originally announced in *Locke* v. *United States,* 7 Cranch 339, 344, 3 L.ed. 364, 366 (1813), and consistently followed by this Court, is inapplicable to this case.

Appellant previously argued that *United States ex rel. Robinson* v. *York,* 281 F.Supp. 8 (D.C.D. Conn. 1968), rendered a portion of her sentence under § 53-219 constitutionally invalid. See Appellant's Additional Response to Jurisdictional Statement at pp. 4-5. Since that time, two state decisions and one federal ruling have echoed the findings of *Robinson.* See Appendices A, B and C. Moreover, the Attorney General of Connecticut has ordered the release of certain inmates on the authority of *Robinson.* See Appendix D.

It appears clear that appellant is presently restrained only as a result of her conviction under § 17-379. Therefore, appellant having served the maximum permissible sentence under § 53-219, the judgment on that count should not act as a bar to the invocation of this Court's jurisdiction.

II.

The Conduct of the Appellant Cannot Overcome the Patent Vagueness of C.G.S. § 17-379.

The appellee has grounded his second argument on the assumption that § 17-379 "is not patently vague on its face." Appellee's brief at p. 7. The appellant would concede the merit of the argument if the appellee's assumption

were valid. However, appellant has demonstrated that the statute's vagueness is inherent and pervasive. Appellant's brief at pp. 9-13.

The question before this Court is whether "the section . . . is void *in toto*, barring all further actions under it, in this, and every other case." *United States* v. *Petrillo,* 332 U.S. 1, 6 (1947). If, as appellant urges, the answer is in the affirmative, there is no necessity to examine her conduct and question whether it is worthy of sanction. As the Court noted in *Thornhill* v. *Alabama,* 310 U.S. 88, 96 (1940):

> There is no occasion to go behind the face of a statute or of the complaint for the purpose of determining whether the evidence, together with the permissible inferences to be drawn from it, could ever support a conviction founded upon different and more precise charges.

Accord, Lanzetta v. *New Jersey,* 306 U.S. 451, 453 (1939). *See also,* Note, *The Void for Vagueness Doctrine in the Supreme Court,* 109 U. Pa. L. Rev. 67, 97 (1960).

The lodestar that has guided this Court's examination of vagueness claims is that the statute must first be examined "on its face." If the form is found to be constitutionally indefinite, recourse to the facts proved cannot save the inherent defect. *Winters* v. *New York,* 333 U.S. 507, 509 (1948). Such is the test applicable in the instant case.

Conclusion

For the reasons stated above and set out in Appellant's Brief, this Court should reverse the judgment and sentence of the Appellate Division of the Circuit Court of Connecticut and hold that C.G.S. § 17-379 is unconstitutional as applied to unmarried females between the ages of sixteen and twenty-one.

Respectfully submitted,

ROBERT N. GROSBY,
JOSEPH D. HARBAUGH,
Attorneys for Appellant.

September 13, 1968.

APPENDICES

APPENDIX A

Liberti v. *York*

CONNECTICUT SUPERIOR COURT

SUPERIOR COURT

NEW LONDON COUNTY

July 29, 1968.

No. 35212

ELIZABETH LIBERTI,

v.

JANET S. YORK, Superintendent Conn. State Farm for Women, Niantic.

MEMORANDUM OF DECISION

On May 5, 1967, the petitioner pleaded guilty to one count of Breach of Peace, G.S. § 53-174, before the Seventh Circuit Court in Meriden, and was sentenced for an indefinite term to the Connecticut State Farm for Women.

The defendant claims the petitioner was committed under G.S. § 17-360 which, in the case of women over sixteen years of age, may be for an indefinite period but not to exceed three years.

The breach of the peace statute provides for a penalty of a fine of not more than $500 or imprisonment of not more than one year or both.

On November 15, 1967, petitioner was paroled and on February 15, 1968, was found in violation of parole and returned under the authority of the original sentence of May 15, 1967.

The petitioner contends that since the breach of peace statute has a maximum sentence of one year this is the limit of her commitment and a sentence under G.S. § 17-360 vio-

lates the equal protection clause of the United States Constitution in that it provides for differential treatment in the case of adult males who could be committed for no longer than one year. It is also claimed that under Gen. St. § 54-1a the Circuit Court can "impose no greater punishment than . . . imprisonment for one year. . . . "

Recognition must be given to the fact that wide discretion is essential in enacting reasonable classifications for criminal penalties in promoting the safety and welfare of a state. But any such classification must have a legitimate basis for the purposes involved.

The state contends the State Farm for Women is a correctional and not a penal institution; that its goals and the efforts of its staff are directed toward rehabilitation and training of its inmates; and that only those women may be committed to said institution "who in the opinion of the trial court will be benefited physically, mentally or morally by such commitment."

This may be idealistically sound but it assumes that a greater period of restraint is necessary in the case of women and that they require a longer period of rehabilitation to again become useful members of society. Factually and statistically there is no basis for any such finding.

There is no reasonable basis for the claim that, for the same offense, breach of the peace, women should be subjected to a possible three year term where men are limited to one year.

The sentence in this case is a discrimination against the petitioner which is in violation of the equal protection of the laws guaranteed by the fourteenth amendment, and the sentence given is one beyond the jurisdiction of the Circuit Court.

Gen. St. § 54-1a.

While the sentence is in excess of what the statute permits, it is not invalid in its entirety but only as to that portion which exceeds the statutory authority.

U.S. v. Pridgeon, 153 U.S. 48, 62.

Judgment for the petitioner may enter in accordance with this opinion.

DEVLIN, J.

APPENDIX B

Bourgoyne v. *York*

CONNECTICUT SUPERIOR COURT

SUPERIOR COURT

NEW LONDON COUNTY

July 29, 1968.

No. 35290

THERESA BOURGOYNE,

v.

JANET S. YORK, Superintendent State Farm for Women.

MEMORANDUM OF DECISION

The petitioner was found guilty in the 12 Circuit Court in Hartford of two counts of obtaining money by false pretences and given an indeterminate sentence to the Connecticut State Farm for Women on each count.

Jurisdiction of the Circuit Court is limited to "a fine of $1,000 or imprisonment for one year, or both."

Gen. St. § 54-1a.

Claim is made by defendant that under Gen. St. § 17-360 the maximum term of the commitment is three years and this determines their jurisdiction.

Any sentence, the effect of which is to imprison the petitioner for a period exceeding one year is beyond the jurisdiction of the court.

While the sentence in this case can[not] be in excess of the jurisdictional power of the court, it is not invalid in its entirety but only as to that portion which exceeds the statutory authority of one year.

U.S. v. Pridgeon, 153 U.S. 48, 62.

Judgment may enter accordingly.

DEVLIN, J.

APPENDIX C

United States ex rel. Sumrell v. *York*

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

Civil No. 12,659

[—— F. Supp. —— (1968),
Filed August 1, 1968]

UNITED STATES *ex rel.* ADA SUMRELL,

v.

JANET S. YORK, Superintendent, Connecticut State Farm for Women.

RULING ON PETITION FOR A WRIT OF HABEAS CORPUS

The petitioner, Ada Sumrell, is a state prisoner presently confined at the Connecticut State Farm for Women, in Niantic. She seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2241, and permission to proceed in forma pauperis, 28 U.S.C. § 1915. Her sole claim is that the statute under which she was sentenced, Connecticut General Statutes, § 17-360,[1] violates the equal protection clause of the Fourteenth Amendment to the United States Constitution in that it allows women to be imprisoned for longer periods of time than men convicted of identical offenses.

The petitioner was convicted on September 22, 1964 of violating a Bridgeport City ordinance against loitering and was sentenced to an indefinite term in the State Farm. She was released on parole and was thereafter arrested on a charge of aggravated assault; CONN. GEN. STAT. (REV.

1958) § 53-16. After having pleaded not guilty to this charge in the Superior Court for Fairfield County, a substituted information was filed charging her with breach of peace, CONN. GEN. STAT. (REV. 1958) § 53-174, an offense punishable by not more than one year in jail, a fine of up to five hundred dollars, or both. She pleaded guilty to this latter charge and was sentenced to the State Farm for an indefinite term to run concurrently with the prior term. It is this sentence which is the basis of her present incarceration and gives rise to this petition.

I. EXHAUSTION:

Respondent claims that this Court is without jurisdiction, because the petitioner has failed to exhaust her state remedies. She is represented by an attorney associated with the Bridgeport Legal Services Committee, Inc., an office sponsored by the Federal Office of Economic Opportunity. On May 23, 1968, this same attorney attempted to file separate petitions for a writ of habeas corpus in the Court of Common Pleas and Superior Court for New London County. These were both rejected by the clerks of the respective courts, because they were not accompanied by the required entry fees. While affidavits establishing the petitioner's indigency were filed with said petitions, under the rule of the state courts the entry fee can be waived only where the individual is represented by the Public Defender or a Special Public Defender appointed by the Court. (Petitioner's Exhibit C.)

It is the rule in this District that when an indigent state prisoner tenders a petition for a writ of habeas corpus which is rejected, because of her inability to pay the entry fee, the exhaustion requirement of 28 U.S.C. § 2254(b) has been satisfied. *United States ex rel. Robinson* v. *York*, Civil No. 12,376 (D. Conn. Feb. 28, 1968); *United States ex rel. Rush* v. *York*, Civil No. 12,173 (D. Conn. Nov. 28, 1967), 42 Conn. B.J. 74. That rule adhered to.

II. DENIAL OF EQUAL PROTECTION:

In *United States ex rel. Robinson* v. *York, supra,* the Court held that it is constitutionally impermissible for the state to imprison adult women for longer terms than adult men under similar circumstances, who are convicted of the same substantive offense. That case differs from the case at bar in two respects: the petitioner in that case was more than twenty-one years of age when sentenced, and her commitment was ordered by the State Circuit Court. These differences are relevant in that they require a consideration of statutes other than those involved in *Robinson.* Section 17-389 of the Connecticut General Statutes (REV. 1958, 1966 Supp.), provides for the commitment of males between the ages of sixteen and twenty-one years of age to the reformatory under certain conditions. Section 17-390 provides in pertinent part:

> "An offender sentenced to the reformatory for an offense for which the maximum punishment is a sentence to a jail, with or without a fine, may be retained in the reformatory not more than two years."

It appears from a reading of this section that a minor male who is convicted in the Superior Court of a breach of the peace, an offense for which the maximum punishment is a sentence in jail and a fine, may be committed to the reformatory for a maximum of two years. Under § 17-360, a minor female convicted of the same offense must be sentenced for an indefinite period of up to three years. The state has pointed to no rational basis for this difference in treatment between minor males and minor females, either with respect to the rehabilitative or the deterrent aspects of incarceration.

> "A classification by sex alone would not, per se, offend the Equal Protection Clause of the United States Constitution. For example, there are undoubtedly significant biological, natural and practical differences

> between men and women which would justify, under certain circumstances, the establishment of different employment qualification standards . . . . We are convinced, however, that the considerations and factors which would justify a difference between men and women in matters of employment, as well as in a number of other matters, do not govern or justify the imposition of a longer or greater sentence on women than is imposed upon men for the commission of the same crime." *Commonwealth* v. *Daniels* (Penn. Sup. Ct.), 37 L.W. 2063, 2064 (7/30/68).

The Court holds, therefore, that the imposition of an indefinite sentence on this petitioner pursuant to the provisions of § 17-360 constitutes the type of arbitrary and invidious discrimination which the Equal Protection Clause of the XIV Amendment to the Federal Constitution is designed to guard against. *United States ex rel. Robinson* v. *York, supra.*

The state claims that under § 17-389 males can be sentenced to the reformatory for up to five years for the commission of a misdemeanor and thus females receive more favorable treatment. This section, when read in conjunction with § 17-390, must be reconciled with the overall statutory scheme, and is not to be read as giving the Court such authority. Its purpose is only to specify those persons eligible for commitment to the reformatory, the types of sentences which may be imposed, and the maximum thereof in general.

Since the petitioner has served more than two years of the sentence for breach of the peace (said two year term having been completed June 3, 1968), the maximum which might be constitutionally imposed,

IT IS ORDERED, that the respondent shall absolutely discharge the petitioner from custody as promptly as possible consistent with administrative regulations at the State Farm for Women. A copy of this memorandum and

order shall be forwarded forthwith by the Clerk of this Court, not only to counsel of record but also to the respondent herein.

This opinion constitutes the Court's findings of fact and conclusions of law.

If an appeal from the foregoing order is desired, this will constitute a certificate of probable cause under 28 U.S.C. § 2253.

Dated at Hartford, Connecticut,
this 31st day of July, 1968.

T. EMMET CLARIE
United States District Judge.

APPENDIX D

Letter of Attorney General Killian

August 5, 1968

Hon. Ellis C. MacDougall
Commissioner of Correction
State Capitol
Hartford, Connecticut

Dear Commissioner MacDougall:

As you know from the conferences we have had, a problem has arisen as a result of the Robinson and Liberti decisions concerning the status of a certain class of inmates at the State Farm For Women.

Recently, the United States District Court (Blumenfeld, J.), granted a petition for writ of habeas corpus ordering that Carrie Robinson, an adult female, be discharged from the custody of the State Farm For Women as promptly as possible consistent with administrative regulations.

Subsequently, Elizabeth Liberti, also an adult female, was granted a writ of habeas corpus in the Superior Court for New London County in a decision which was handed down (Devlin, J.) August 1, 1968.

Mrs. Robinson was convicted of the crimes of breach of peace and resisting arrest on November 18, 1966 and committed to the State Farm For Women under Section 17-360 of the 1965 Supplement to the General Statutes. On November 11, 1967 she was again presented before the Ninth Circuit Court and pleaded guilty to two (2) charges of intoxication and willful destruction of property. The sentences imposed on these two counts were suspended and Mrs. Robinson was returned to the State Farm as a parole violator under the original sentence. The maximum term to which an adult male found guilty of breach of peace may

be sentenced is one (1) year and the maximum term for an adult male found guilty for resisting arrest is six (6) months. See Sections 53-174 and 53-165, respectively.

On May 5, 1967 Elizabeth Liberti, an adult female, pleaded guilty to one count of breach of peace (G.S. Section 53-174) and was sentenced under Section 17-360 to an indefinite term at the Connecticut State Farm For Women.

The sentences for both of the above cases were challenged in court actions; the first before the United States District Court and the latter case being decided by the Superior Court for New London County. In each case the court arrived at the same result on substantially the same reasoning. Both of the above named persons were committed under Section 17-360 which in brief provides that a person sentenced to an indeterminate term may be held for not longer than three (3) years as an inmate of the institution. Inasmuch as adult males could be held no longer than one (1) year for breach of peace and six (6) months for resisting an officer, both courts held that it is constitutionally impermissible for the State to confine adult women for longer terms than adult males when they are convicted of the same substantive offense.

In view of these court decisions it is our opinion that adult females now confined in the State Farm For Women as a result of being committed to indeterminate sentences under Section 17-360 who have been convicted of crimes the penalty for which is less than three (3) years when applied to adult males should be discharged from the State Farm For Women as soon as it is administratively convenient, provided, of course, they have served the maximum term provided by statute for the particular offense for which each has been convicted. This rule applies only to inmates who had attained the age of twenty-one (21) years or more at the time of conviction and is strictly limited to the situations presented in the Robinson and Liberti

cases. If you have any further questions concerning this matter, please contact us immediately.

Very truly yours,

ROBERT K. KILLIAN
Attorney General

By: .....
Raymond J. Cannon
Assistant Attorney General

RJC:M
cc:
JANET S. YORK,
State Farm For Women

HON. JOHN J. DALY
Chief Judge of Circuit Court

MATTIELLO *v.* CONNECTICUT.

APPEAL FROM THE APPELLATE DIVISION OF THE CIRCUIT COURT OF CONNECTICUT.

No. 150. Argued December 11, 1968.—Decided May 26, 1969.

4 Conn. Cir. 55, 225 A. 2d 507, appeal dismissed.

Robert N. Grosby argued the cause for appellant. With him on the briefs was *Joseph D. Harbaugh.*

George F. Carroll, Jr., argued the cause and filed a brief for appellee.

PER CURIAM.

The appeal is dismissed for want of a properly presented federal question.